

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 1/16/2007	Department ID Number: CA-07-01

CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, DPA, City Administrator

PREPARED BY: JENNIFER McGRATH, City Attorney *fel D* 12/28/06

ROBERT F. BEARDSLEY, PE, Director of Public Works *RFB*

SUBJECT: Adopt Resolution for Condemnation of 20-Foot Right-of-Way at 7782 and 7802 Garfield

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s).

Statement of Issue: A public hearing is required to allow those property owners who filed written requests within the time specified in the notice to address the proposed condemnation of a 20-foot right-of-way at 7782 and 7802 Garfield Avenue. If the City Council finds, from all the evidence submitted that the condemnation is necessary for present or prospective public use, it may adopt a resolution of necessity approving the acquisition.

Funding Source: Should the resolution be adopted, funding for property acquisition will be provided by Traffic Impact Fee, Street Widening, Land Acquisition, Account No. 2069001.81000.

Recommended Action: Motion to:

Adopt Resolution No. 2007-2, a resolution of necessity of the City Council of the City of Huntington Beach, California, approving the acquisition of portions of certain real property located at 7782 and 7802 Garfield Avenue Assessor's Parcel Nos. 159-151-01, 159-151-02, 159-151-03, and 159-151-16, together with a temporary construction easement of less than 5 feet immediately adjacent and south of the acquired real property for a period of 3 months during construction, by eminent domain to permit street widening.

(This resolution must be adopted by **two-thirds (at least 5)** of all the members of the City Council.)

Alternative Action(s): Do not adopt resolution of public necessity.

D-3

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 1/16/2007

DEPARTMENT ID NUMBER: CA-07-01

Analysis:

Factual Background:

The City's General Plan Circulation Element currently designates Garfield Avenue as a four-lane primary street with a center median. The City has also adopted the County Master Plan of Arterial Highways that requires the widening of Garfield Avenue to a four-lane street. The City is obligated to comply with the Plan to receive Measure M funds and grants.

One small section of Garfield Avenue, between Delaware and Florida Streets, remains to be widened to bring it into conformance with the City's General Plan and the County Master Plan of Arterial Highways. This small section currently has a single lane of travel in each direction, no center median, no bicycle lanes, and no curbs, gutters, or sidewalks. The widening of this last remaining section will result in a total public right-of-way of 100 feet, with four through lanes, including painted median, bicycle lanes, and curbs, gutters and sidewalks. The street will conform and align with the existing public roadway to the immediate east and west of the location.

The City has acquired by agreement all the required additional right-of-way on each side of Garfield Avenue for the widening project with the exception of 20 feet of additional right-of-way from four parcels on the south side of Garfield. Three of these parcels, commonly known as 7802 Garfield, are owned by the Alvarez family, and one parcel, commonly known as 7782 Garfield, is owned by the Contreras family.

Appraisals were obtained to determine just compensation for the acquisition of the 20-feet of right-of-way from the four parcels, and a three month temporary construction easement that will be required during actual construction. This involved determining the fair market value of the property being acquired at its "highest and best use" and whether the acquisition resulted in any "severance damage" to the remaining portions of the property. Based upon said appraisals, and the City Attorney's analysis of any required dedication of property, formal Offers of Purchase in compliance with Government Code Section 7267.2 were extended to the owners, or their representatives, on November 15, 2006, as previously authorized by the City Council. Copies of these Offers, with the accompanying statements and summaries, are attached, and were for the following amounts:

<u>Parcel No.</u>	<u>Address</u>	<u>Ownership</u>	<u>Amount of Offer</u>
159-151-01	7802 Garfield Ave	Alvarez	\$88,110.05
159-151-02	7802 Garfield Ave	Alvarez	\$55,132.50
159-151-03	7802 Garfield Ave	Alvarez	\$55,132.50
159-151-16	7782 Garfield Ave	Contreras	\$84,904.05

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 1/16/2007

DEPARTMENT ID NUMBER: CA-07-01

Status of Negotiations: The Contreras parcel is owned by eight individuals. City staff has had preliminary discussions with three of the owners having a two-thirds ownership interest in the parcel. The remaining individuals have not responded, and the City's offer has not yet been accepted.

The Alvarez family is represented by counsel and he has just recently responded to the City's offer, stating that he does not anticipate any decision from his clients until early January, 2007.

Necessity for Recommended Action: To keep the widening project on schedule and to take advantage of available grant funding for the construction of the roadway improvements, certain steps need to be undertaken to obtain timely possession of the necessary right-of-way. These steps include passage of the proposed Resolution of Necessity, the filing of a condemnation complaint in Superior Court, the depositing of the amounts that have been offered with the State Treasurer's Office, and the obtaining of an order of immediate possession from the Court.

While proceeding with these steps to obtain timely possession of the necessary right-of-way, staff will continue with their efforts to acquire the right-of-way by agreement. Should these efforts prove unsuccessful, the issue of just compensation ultimately will be determined by a judge and/or jury.

The owners of the affected property have received written notice regarding the preparation of the resolution of necessity. These parties must have filed a written request to be heard at the January 16, 2007 City Council meeting. The written requests were required to be received by the City Clerk prior to one o'clock pm on January 16, 2007. If after hearing all parties, the City Council may determine that the requested action is necessary if it determines that the projected widening and improvement of Garfield Avenue:

- A. Is required by the public's interest and necessity;
- B. Is planned in a manner that will be most compatible with the most public good and the least private injury;
- C. Requires acquisition of the property sought to be acquired; and
- D. Whether offers to purchase, and accompanying statements and summaries, were made in a form and manner required by Government Code Section 7267.2(a).

Environmental Status: Notice of Exemption filed on November 4, 2005

D3 . 3

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 1/16/2007

DEPARTMENT ID NUMBER: CA-07-01

Attachment(s):

City Clerk's Page Number	No.	Description
5	1.	Resolution No. 2007-2; A resolution of necessity of the City Council of the City of Huntington Beach, California, approving the acquisition of a portion of certain real property located at 7782 and 7802 Garfield Avenue, Assessor's Parcel Nos. 159-151-01, 159-151-02, 159-151-03 and 159-151-16, together with a temporary construction easement of less than 5 feet immediately adjacent and south of the acquired real property for a period of 3 months during construction, by eminent domain to permit street widening.
31	2.	APN 159-151-01 Offer documents, dated 11-15-2006
50	3.	APN 159-151-02 Offer documents, dated 11-15-2006
68	4.	APN 159-151-03 Offer documents, dated 11-15-2006
86	5.	APN 159-151-16 Offer documents, dated 11-15-2006
116	6.	Notice of Intention to adopt a Resolution of Necessity for the acquisition of a portion of certain real property located at 7782 and 7802 Garfield Avenue, identified as Assessor Parcel Nos. 159-151-01, 159-151-02, 159-151-03, and 159-151-16, with Proof of Service dated 12-27-2006.

ATTACHMENT 1

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RESOLUTION NO. 2007-2

A RESOLUTION OF NECESSITY OF THE
CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH, CALIFORNIA
APPROVING THE ACQUISITION OF PORTIONS OF CERTAIN REAL PROPERTY
LOCATED AT 7782 AND 7802 GARFIELD AVENUE, ASSESSOR'S PARCEL NOS. 159-
151-01, 159-151-02, 159-151-03, AND 159-151-16, TOGETHER WITH A TEMPORARY
CONSTRUCTION EASEMENT OF LESS THAN 5 FEET IMMEDIATELY ADJACENT AND
SOUTH OF THE ACQUIRED REAL PROPERTY FOR A PERIOD OF 3 MONTHS DURING
CONSTRUCTION, BY EMINENT DOMAIN TO PERMIT STREET WIDENING

WHEREAS, the project for purposes of this acquisition consists of the widening and
improving of Garfield Avenue (the "Project"); and

The City Council is authorized under Government Code §§ 37350.5 and 40404 to utilize
the power of eminent domain to acquire real property for the purpose of installing, constructing
and widening public streets, and for related public purposes which are a governmental function
of the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-
01 and whose address is 7802 Garfield Avenue, which real property is more particularly
described in the legal description and illustration, respectively attached hereto as Exhibit A and
Exhibit B and by this reference incorporated herein, is adjacent to the south side of Garfield
Avenue in the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-
02, and whose address is 7802 Garfield Avenue, which real property is more particularly
described in the legal description and illustration, respectively attached hereto as Exhibit C and
Exhibit D and by this reference incorporated herein, is adjacent to the south side of Garfield
Avenue in the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-03, and whose address is 7802 Garfield Avenue, which real property is more particularly described in the legal description and illustration, respectively attached hereto as Exhibit E and Exhibit F, and by this reference incorporated herein, is adjacent to the south side of Garfield Avenue in the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-16 and whose address is 7782 Garfield Avenue, which real property is more particularly described in the legal description and illustration, respectively attached hereto as Exhibit G and Exhibit H, and by this reference incorporated herein, is adjacent to the south side of Garfield Avenue in the City; and

An aerial map showing the Property and immediate vicinity is attached hereto as Exhibit I and by this reference is incorporated herein; and

The City Council has determined that it is in the interest of the City to widen Garfield Avenue in accordance with the Project; and

Pursuant to Government Code § 65402, the Planning Commission of the City of Huntington Beach adopted General Plan Conformance No. 03-01 and Resolution No. 1584, on July 22, 2003, stating the findings and determinations of the Planning Commission that the location, purpose, and extent of the proposed acquisition of the Property conform with the City's General Plan; and

All persons whose names and addresses appear on the last equalized county assessment roll for the Property were given notice of the intention of the City to adopt a Resolution of Necessity and to authorize the institution of eminent domain proceedings, and were informed of the right to be heard on said matter pursuant to the Code of Civil Procedure § 1245.235; and

A public hearing was held by the City Council on January 16, 2007, at which the matters set forth above and in Code of Civil Procedure § 1240.030 were discussed, including the following matters: (a) whether the public interest and necessity require the Project; (b) whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) whether the Property is necessary for the Project; and (d) whether an offer of just compensation pursuant to Government Code § 7267.2 has been made to the owner or owners of record;

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby resolve as follows:

Section 1: That the above Recitals are all true and correct and are incorporated herein.

Section 2: That the City Council does hereby find and determine the following:

- A. That the City Council, pursuant to Government Code §§ 37350.5 and 40404, is empowered to condemn any property necessary to carry out the public purpose of the Project.
- B. That the public interest and necessity require construction and completion of the Project, because the City's General Plan, and specifically the Circulation Element, calls for the expansion of Garfield Avenue in the manner contemplated by the Project. In addition, the Garfield Avenue road widening is designed to relieve traffic congestion, increase the capacity of the street and provide continuity in the roadway alignment, and to provide the adjoining

real properties with improved and safer access, improved drainage, together with curbs, gutter, and sidewalks.

- C. That the Project is planned and located in a manner that will be most compatible with the greatest public good and least private injury, because the design of the roadway widening must of necessity occupy land which is immediately adjacent to the existing roadway in order to maintain the continuity of the alignment of the road for all users. The Project is designed in a manner compatible with the greatest public good, because the Project will involve road widening and related improvements which will enhance the utility, drainage, and safety of the area, including improving traffic safety and circulation for all those traveling on Garfield Avenue, and also including improved and safer access to and from the adjoining properties. The Project will result in the least private injury, because where consistent with safe roadway design restrictions, the amount of property for potential acquisition was determined so as to minimize the amount of the parcel taken, and to minimize impacts to the remainder of the parcel.
- D. That the acquisition of the Property is necessary to permit construction and completion of the Project, because the roadway widening must occur on property immediately adjacent to the

existing roadway. Without inclusion of the Property, the Project could not be completed.

- E. That the acquisition of a temporary construction easement of less than 5 feet immediately adjacent and south of the Property, for a period of 3 months during construction, to permit intermittent use of the adjacent property for purposes of construction, is also necessary to permit construction and completion of the Project.
- E. That the City prepared and recorded an environmental impact Notice of Exemption on November 4, 2005 regarding the Project.
- F. That offers of just compensation pursuant to Government Code § 7267.2 have been made to all owners of record of the Property, or their representatives, on or about November 15, 2005, that reasonable diligence has been used to locate every interested owner, that the City's offers of just compensation were based on appraisals of the Property, and that the City's offers were for the full appraised amount. City staff has had discussions with the owners, or their representatives, subsequent to these offers, but such discussions have not yet proved successful in securing the necessary property interests outside of more formal proceedings.
- G. That due to the failure of the owners of record to accept the City's offers of just compensation, the Project cannot be completed except by the City Council's power of eminent domain.

- H. That the public interest and necessity require acquisition of the Property and that such acquisition is necessary for the Project.
- I. That the Property, acquisition of which is required for the public interest and necessity, is situated in the City of Huntington Beach, County of Orange, State of California.

Section 3: The City Council hereby declares its intent to acquire a fee simple absolute interest, for the purpose of conducting roadway widening and related improvements, in and to the Property in the City's name in accordance with the provisions of the laws of the State of California. The City Council further declares its intent to acquire a temporary construction easement of less than 5 feet immediately adjacent and south of the Property, for a period of 3 months during construction of the Project, to permit intermittent use of the adjacent property for purposes of construction of the Project.

Section 4: The City Attorney is hereby authorized to commence an action in the Superior Court of the State of California in and for the County of Orange, in the name and on behalf of the City against those persons who appear as owner or owners of record or who are known to have any claim or interest in the Property for the purpose of acquiring a fee simple absolute interest in and to the Property by eminent domain for the public uses described herein, to acquire a temporary construction easement of less than 5 feet immediately adjacent and south of the Property for a period of 3 months during construction of the Project, and to make application for possession of the Property prior to judgment, to do all things necessary to prosecute the action to its final determination in accordance with the provisions of law applicable thereto, and to take any appropriate action consistent with the purposes of this Resolution.

Section 5: The City staff is hereby authorized to take any appropriate action consistent with the purposes of this Resolution, including but not limited to the withdrawal of necessary sums to deposit with the Court as the probable amount of compensation that will be awarded in the eminent domain proceedings to acquire the Property.

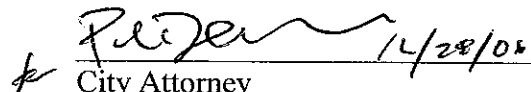
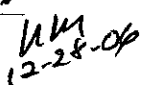
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2007.

REVIEWED AND APPROVED:


City Administrator

Mayor

APPROVED AS TO FORM:

 12/28/06
City Attorney 

INITIATED AND APPROVED:


Director of Public Works

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EXHIBIT A

Exhibit A

Legal Description

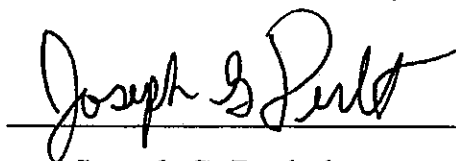
The Northerly 20.00 feet, of the Easterly 77.00 feet of Lot 3, of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom all right, title and interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, with the right to enter in and upon the premises at any time, drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed from W.M. Elliott and Vera L. Elliott to Daniel Contreras and Ruperta Contreras, husband and wife, for an undivided one-half interest in said land recorded June 26, 1944, in Book 1259, page 258 of Official Records of Orange County, California and as reserved in the deed from Katherine Hendrickson McDonald, formerly Katherine Hendrickson, to Pete Alvarez and Carmen O. Alvarez, husband and wife, for an undivided one-half interest in said land, recorded February 27, 1958 in Book 4210, page 222 of Official Records of said Orange County.

Containing 1540.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.

DRAFT



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-01

CITY OF HUNTINGTON BEACH

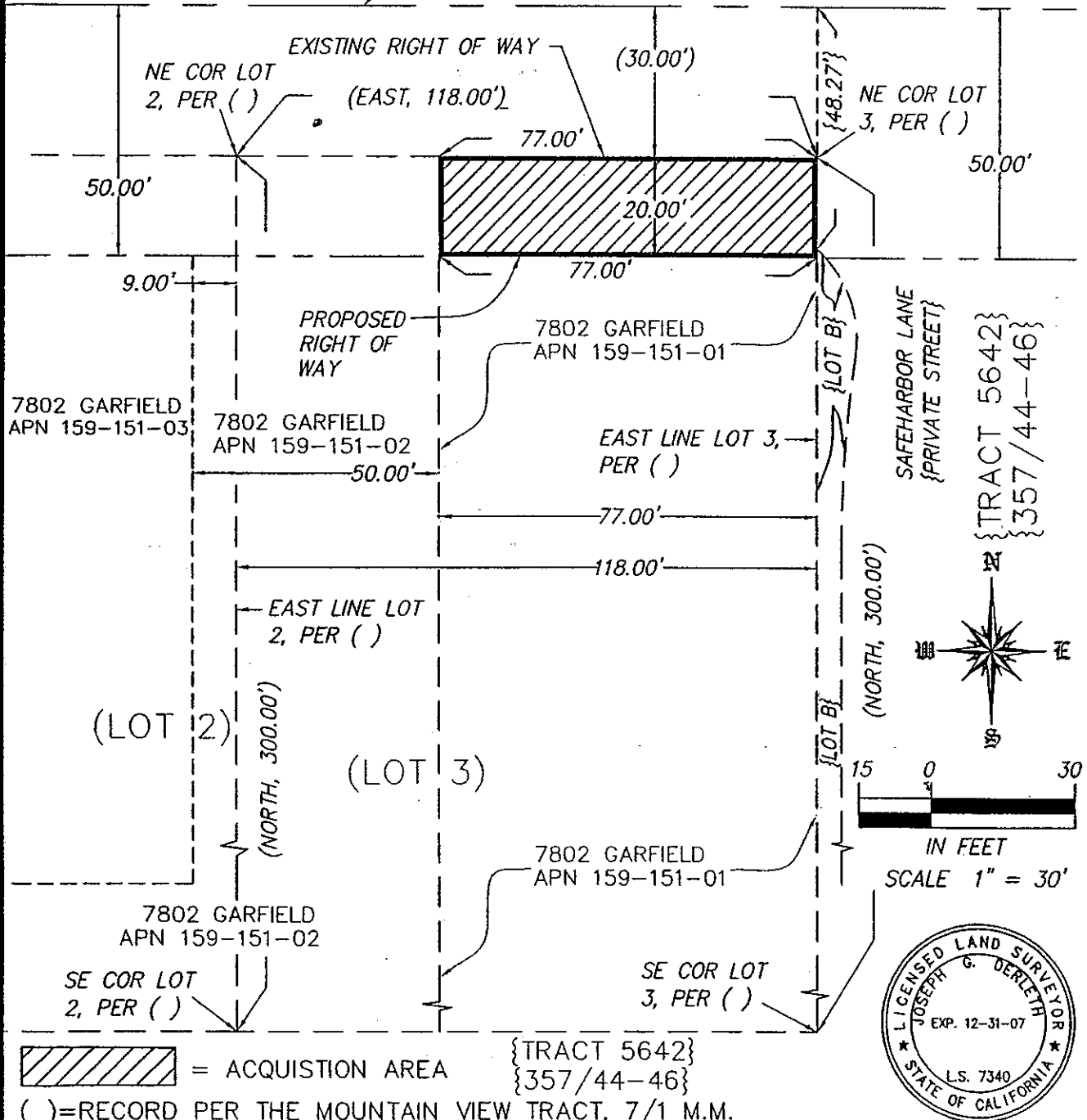
DEPARTMENT OF PUBLIC WORKS

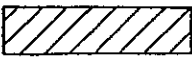


EXHIBIT B

Exhibit B

GARFIELD AVENUE



 = ACQUISITION AREA {TRACT 5642}
 {357/44-46}
 ()=RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.
 { }=RECORD PER TRACT 5642, 357/44-46 M.M.

NOTE: LOT B, SHOWN HEREON WAS CREATED PER TRACT 5642, BUT IS UNDEFINED THEREON AS TO PURPOSE OF CREATION.

Plat for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-01

D3.16

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



EXHIBIT C

Exhibit C

Legal Description

The North 20.00 feet, of the West 41.00 feet of Lot 3 and the North 20.00 feet, of the East one-half of Lot 2, both of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom the North 170.00 feet, of the West 50.00 of said East one-half of said Lot 2.

Also excepting therefrom an undivided one-half interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, and the right to enter in and upon the premises at any time to drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed recorded June 26, 1944, in Book 1256, page 258 of Official Records, of said County

Also excepting therefrom an undivided one-half interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, and the right to enter in and upon the premises at any time to drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed recorded February 27, 1958 in Book 4210, page 222 of Official Records, of said County.

Containing 1000.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.



DRAFT

Joseph G. Derleth

Joseph G. Derleth
PLS 7340, expires 12/31/07

Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-02

D3 . 18

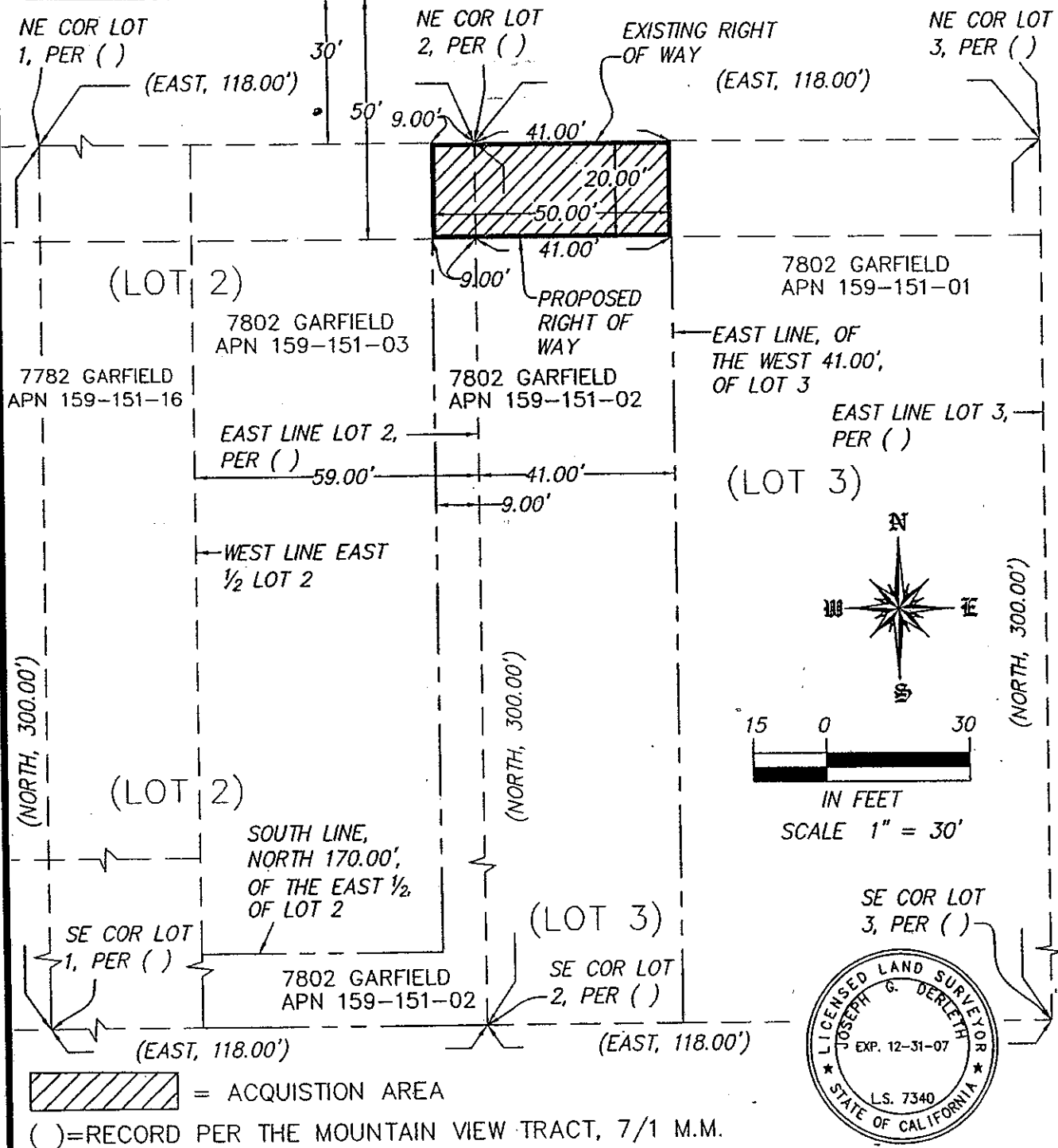
CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



EXHIBIT D

Exhibit D

GARFIELD AVENUE



Plat for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-02

D3 . 20

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



EXHIBIT E

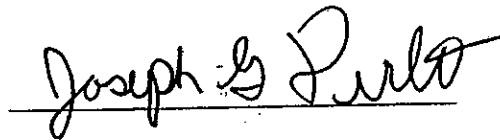
Exhibit E

Legal Description

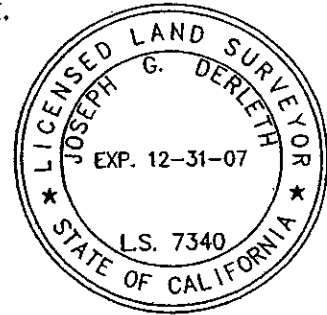
The Northerly 20.00 feet, of the North 170.00 feet, of the West 50.00 of the east one-half of Lot 2, of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Containing 1000.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-03

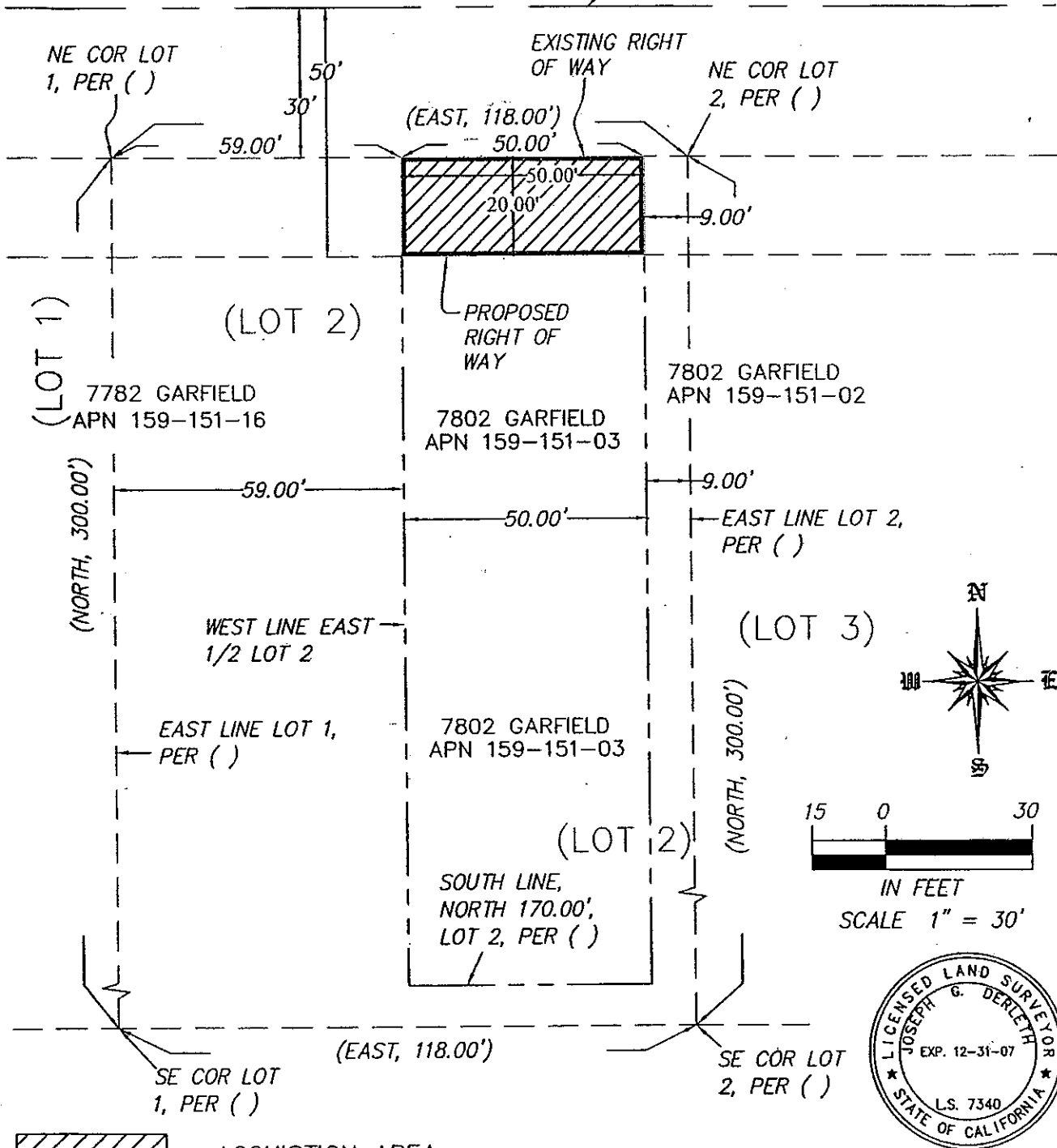
CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



EXHIBIT F

Exhibit F

CL GARFIELD AVENUE



= ACQUISITION AREA

() = RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

Plat for Right-of-Way Acquisition
7802 Garfield Avenue, : APN 159-151-03

D3 . 24

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



EXHIBIT G

Legal Description

The Northerly 20.00 feet of the North half of Lot 1 and the Northerly 20.00 feet of the West 59.00 feet of Lot 2, both of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom the West 88.50 feet, and the West 11.50 of East 29.50 feet of said North half of said Lot 1.

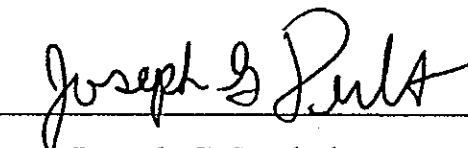
Also excepting therefrom the South 150.00 feet, of said 59.00 feet of said Lot 2.

Also excepting therefrom all right, title and interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, with the right to enter in and upon the premises at any time, drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed from A.M. Elliott and Vera L. Elliott to Daniel Contreras and Ruperta Contreras, husband and wife, for an undivided one-half interest in said land recorded June 26, 1944, in Book 1259, page 258 of Official Records of Orange County, California and as reserved in the deed from Katherine Hendrickson McDonald, formerly Katherine Hendrickson, to Pete Alvarez and Carmen O. Alvarez, husband and wife, for and undivided one-half interest in said land, recorded February 27, 1958 in Book 4210, page 222 of Official Records of said Orange County.

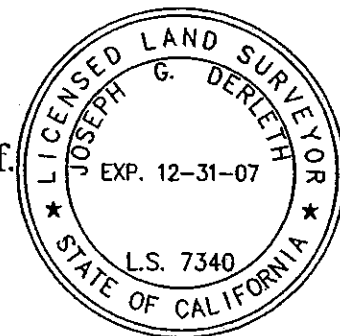
Containing 1540.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.

DRAFT



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7782 Garfield Avenue : APN 159-151-16

D3.26

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

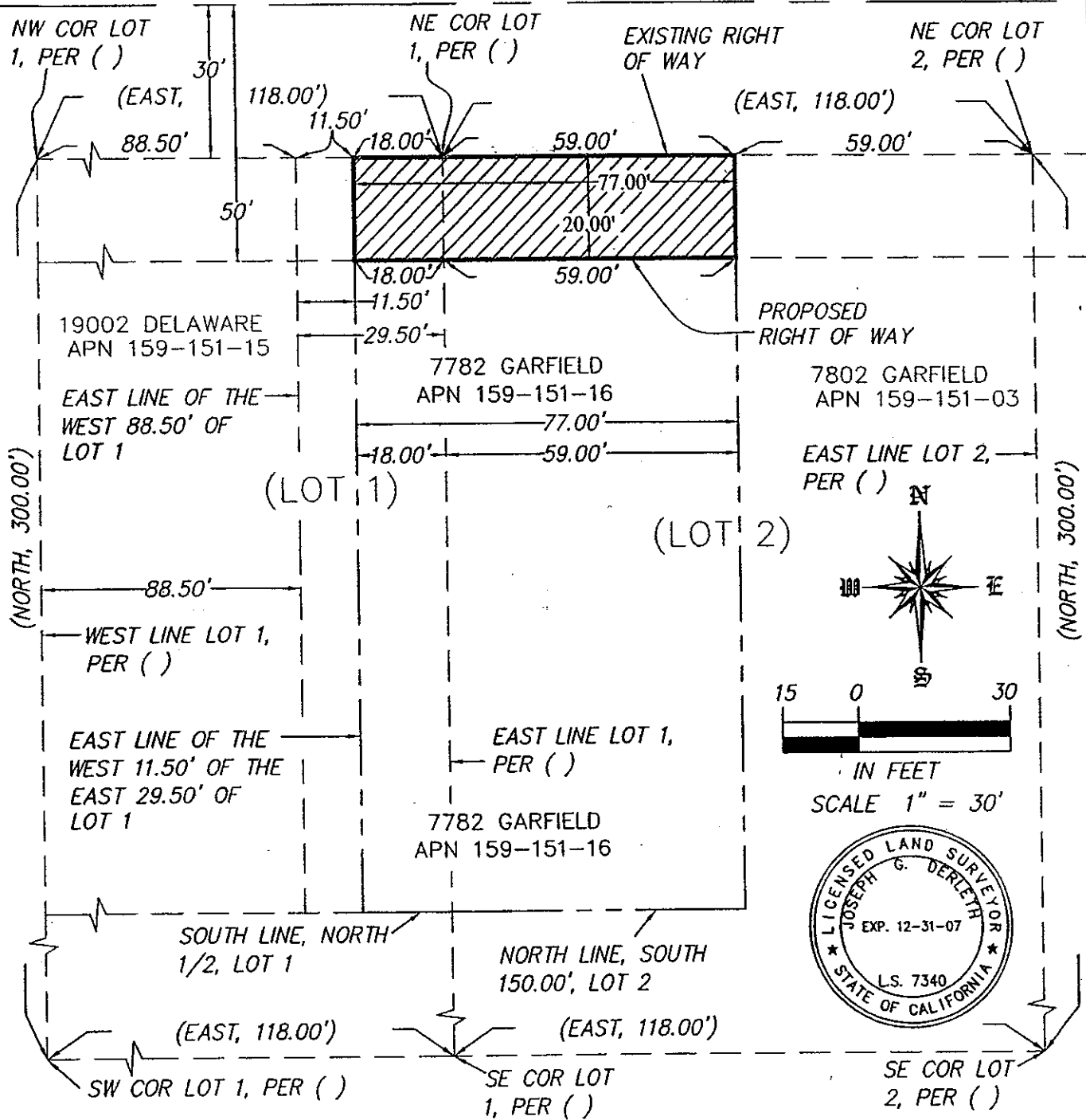


EXHIBIT H

Exhibit H

Resolution No. 2007-2

GA FIELD AVENUE



= ACQUISITION AREA

() = RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

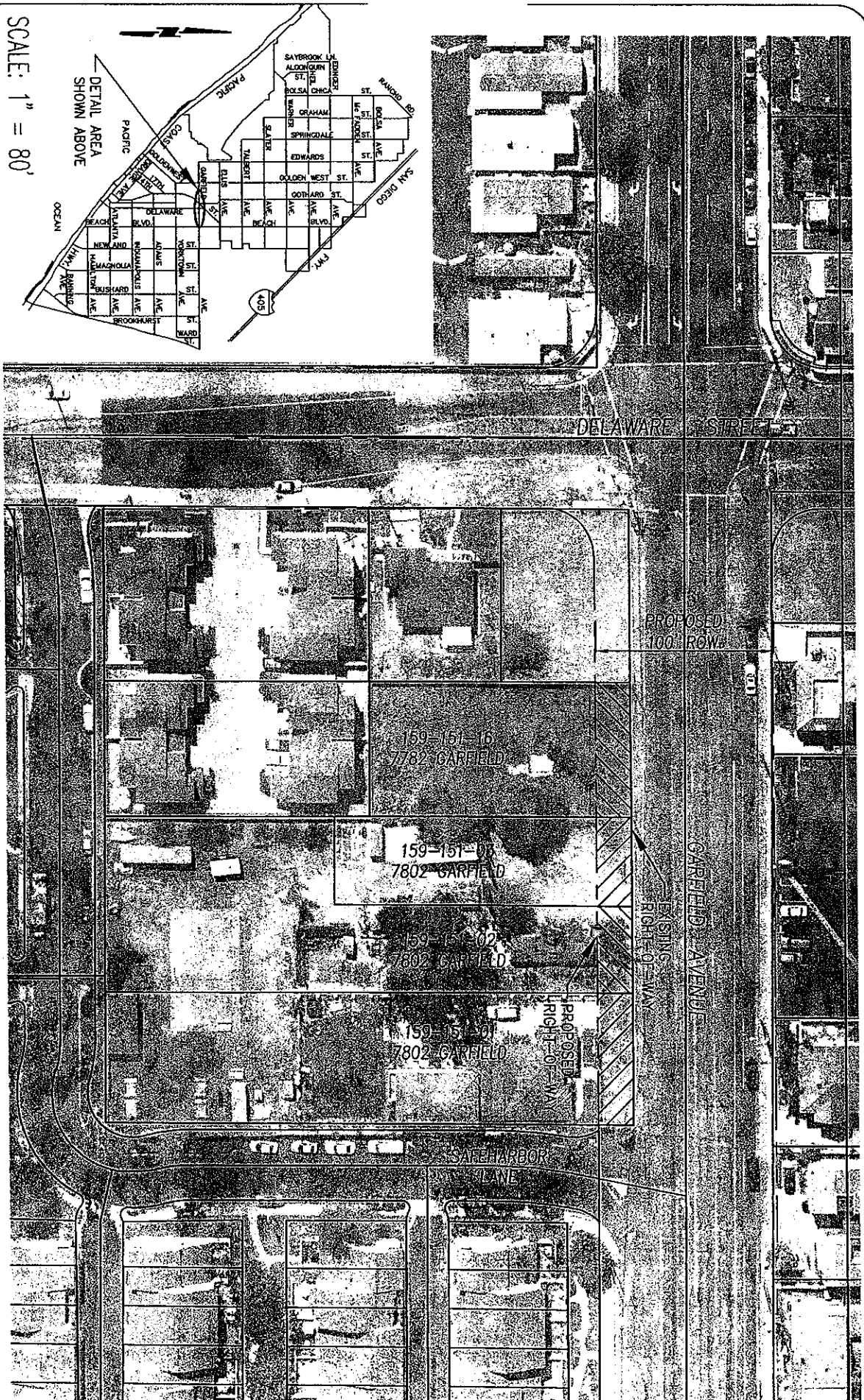
Plat for Right-of-Way Acquisition
7782 Garfield Avenue : APN 159-151-16

D3.28

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



EXHIBIT I



SCALE: 1" = 80'

REAL PROPERTY ACQUISITION
20 FOOT RIGHT-OF-WAY AT 7782 AND 7802 GARFIELD AVE.

CITY OF HUNTINGTON BEACH

DEPARTMENT OF PUBLIC WORKS

D3 . 30



ATTACHMENT 2

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Jennifer McGrath
City Attorney

OFFICE OF
CITY ATTORNEY

P.O. Box 190
2000 Main Street
Huntington Beach, California 92648
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr. Deputy City Attorney
John Fujii, Deputy City Attorney
Teresa Judd, Deputy City Attorney
Leonie Mulvihill, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Mike Vigliotta, Deputy City Attorney

November 15, 2006

Michael M. Leifer
Palmieri Tyler Wiener Wilhelm & Waldron, LLP
2603 Main Street
East Tower, Suite 1300
Irvine, CA 92614-6228

Re: **Assessor's Parcel No. 159-151-01**
(7802 Garfield Ave., Huntington Beach, California)

Dear Mr. Leifer:

The staff of the City of Huntington Beach is proposing to recommend to the City Council the acquisition of 20 feet of right-of-way from the above Parcel for the widening of Garfield Avenue. The street will be widened to permit four travel lanes, a median, on-street parking, bicycle lanes and curb, gutter and sidewalk.

We understand that your clients, Fidencio Alvarez and Vivian O. Alvarez, are the owners of the property located at 7802 Garfield, identified by the County Assessor as Parcel No. 159-151-01. The property is within the street widening area; a legal description and plat map of the portion of the above Parcel under consideration for acquisition are attached to the enclosed Offer to Purchase.

While staff proposes to recommend the acquisition of the described property to the City Council of the City of Huntington Beach for this project, no decision to acquire can be made until the City Council formally acts to approve this acquisition. Nothing in this letter is meant to pre-commit the City Council or otherwise limit the options available to the City Council. Consequently the enclosed Offer, if accepted, and the acquisition of the described property are conditional upon and require the approval of the City Council.

It is our sincere desire that the described property can be acquired amicably, expeditiously, and by negotiation, with the approval of City Council. To this end,

Michael M. Leifer

Re: Assessor's Parcel No. 159-151-01

November 15, 2006

Page 2

California *Government Code* §7267.2(a) provides that *prior to* initiating negotiations for the acquisition of real property that the City of Huntington Beach shall:

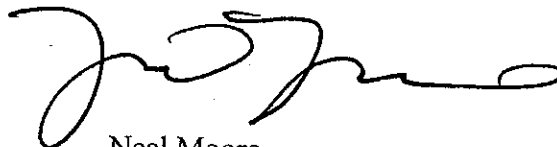
- Make an offer to the Owner of record to acquire the property for the full amount that the public entity has established as just compensation;
- Which offer is not less than the public entity's appraisal of the fair market value of the property; and
- Provide the Owner with a written statement of, and summary of the basis for, the amount the City of Huntington Beach established as just compensation.

As you will note from the enclosed Offer to Purchase and Valuation and Appraisal Summary Statement, the City of Huntington Beach is offering an amount that is greater than the amount that it believes would constitute just compensation if the entire 20 feet of property to be acquired was lawfully subject dedication in connection with the construction undertaken pursuant to the building permit issued in 2001. The City does this in an effort to acquire the property by negotiated agreement and to avoid litigation, and it should not be deemed an admission of value. As such, in the event the property cannot be acquired by negotiated agreement and the City should elect to proceed by way of an action in eminent domain, the City will assert that the entire 20 feet of property was lawfully subject to dedication.

Also enclosed herewith is a proposed Contract of Acquisition which your clients will be asked to sign if they accept the City's Offer.

After you have had an opportunity to review the City's offer with your clients, I will be contacting you to discuss the matter. Should you have any questions, or wish to discuss the matter before you hear from me, do not hesitate to call.

Very truly yours,



Neal Moore
Sr. Deputy City Attorney

NM:cl

Offer to Purchase
(APN 159-151-01)
(Govt. Code Sections 7267.1 and 7267(a))

The City of Huntington Beach is proposing to widen and upgrade Garfield Avenue. This project will necessitate acquiring an additional 20 feet of right-of way along the southern side of Garfield Avenue. Attached hereto as Exhibits A and B are the Legal Description and Plat map for Right-of-Way Acquisition of the property (herein after called the "Parcel") that the City proposes acquiring for this project. A review of the Orange County Public Records reveals that title to said Parcel is vested in Fidencio and Vivian O. Alvarez.

The City of Huntington Beach proposes to acquire for the project all rights in the Parcel in fee simple interest.

The City of Huntington Beach anticipates that the construction of the public improvements along Garfield and within the Parcel may necessitate intermittent use of the property immediately adjacent and south of said Parcel. For this purpose, the City proposes acquiring a temporary construction easement of less than five (5) feet of property immediately adjacent and south of said Parcel for a period of three (3) months during construction.

The City of Huntington Beach offers to pay the sum of **\$87,290.00** for the acquisition of said Parcel, and improvements thereon, an amount that the City believes is greater than what would constitute just compensation under applicable legal authorities. This offer is made with the express notation that, if it is not accepted and the property cannot be acquired by negotiated agreement, and should the City elect to proceed by way of an action in eminent domain, this offer shall not be considered or deemed an admission of what constitutes just compensation under applicable legal authorities.

The City of Huntington Beach also offers to pay the sum of **\$820.05** for the above-described temporary construction easement, an amount that the City believes constitutes just compensation.

This offer is conditional upon the Huntington Beach City Council ratifying the offer by formal action taken at a regular public meeting authorizing the execution of a Contract of Acquisition or adopting a Resolution of Necessity, or both.

When property is sold to the City of Huntington Beach, there is the same obligation as in a private transaction for the Owner to pay in escrow the amounts needed to remove any existing liens and encumbrances. In the event that you decide to accept the offer, it is recommended that you contact directly the persons, if any, to whom you may be making payments under trust deeds or other liens, and reach an agreement with them as to the amount of money they will demand, if any, in escrow to clear the property being acquired of these liens and encumbrances. In the event that there are liens and encumbrances, the Owner shall either:

- (1) Pay to Owners of liens and encumbrances, out of the approved compensation paid by the City of Huntington Beach, the amount needed to terminate leases or cancel trust deeds, mortgages, or other liens affecting the property acquired, or
- (2) Arrange for holders of leases, trust deeds, mortgages, or other liens to quitclaim their interest, if any, to the Parcel being acquired.

Similarly, when an Owner sells his/her property to the City of Huntington Beach, the Owner's obligation to pay current and past due property taxes is the same as if the Owner were selling to a private individual.

However, you, as an Owner, will not be required to pay recording fees, transfer taxes, or the *pro rata* portion of real property taxes which are allocable to any period after the passage of title or possession to the City of Huntington Beach.

If you have any questions in regard to this offer, please contact Neal Moore at (714) 375-8452.

Exhibit A

Legal Description

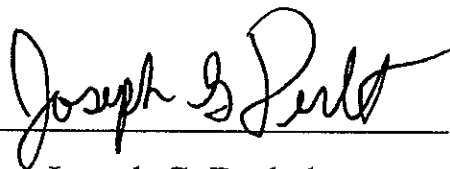
The Northerly 20.00 feet, of the Easterly 77.00 feet of Lot 3, of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom all right, title and interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, with the right to enter in and upon the premises at any time, drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed from W.M. Elliott and Vera L. Elliott to Daniel Contreras and Ruperta Contreras, husband and wife, for an undivided one-half interest in said land recorded June 26, 1944, in Book 1259, page 258 of Official Records of Orange County, California and as reserved in the deed from Katherine Hendrickson McDonald, formerly Katherine Hendrickson, to Pete Alvarez and Carmen O. Alvarez, husband and wife, for and undivided one-half interest in said land, recorded February 27, 1958 in Book 4210, page 222 of Official Records of said Orange County.

Containing 1540.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.

DRAFT



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-01

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

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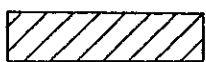
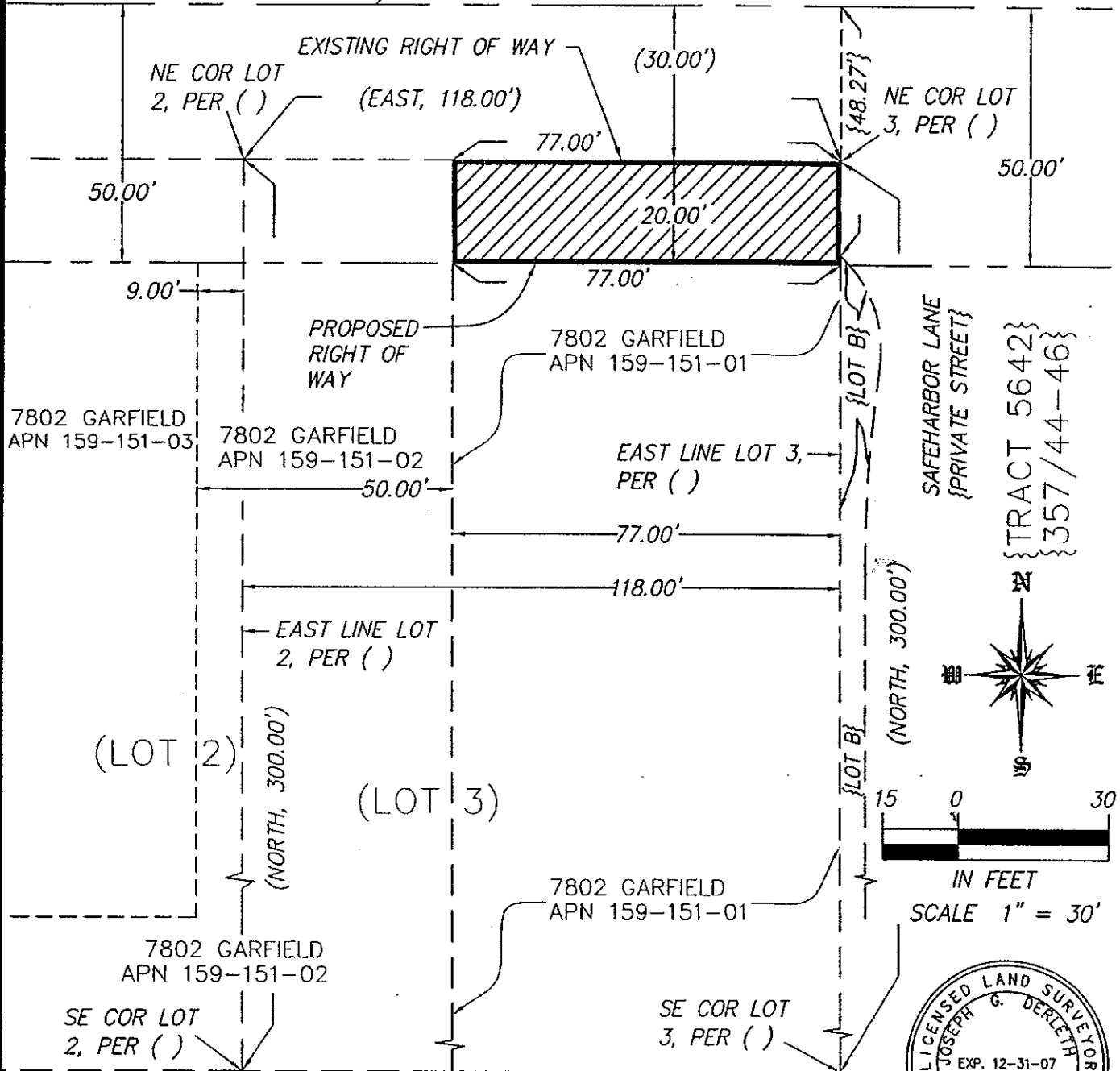
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Exhibit B

CL GARFIELD AVENUE



= ACQUISITION AREA

{TRACT 5642}
{357/44-46}

()=RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

{ }=RECORD PER TRACT 5642, 357/44-46 M.M.

NOTE: LOT B, SHOWN HEREON WAS CREATED PER TRACT 5642, BUT IS UNDEFINED THEREON AS TO PURPOSE OF CREATION.



Plat for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-01

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

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**Summary Statement Accompanying Government Code § 7267.2(a)
Offer Relating to Acquisition Procedures for Purchase
of Real Property At 7802 Garfield Avenue, Huntington Beach,
California, APN: 159-151-01 (Fidencio and Vivian Alvarez)**

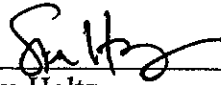
The California Relocation Assistance and Real Property Acquisition Guidelines provide that each Owner from whom the City of Huntington Beach purchases real property or an interest therein, or each tenant owning improvements on said property, be provided the following information which may or may not be applicable to your property and this proposed acquisition.

- 1) You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
- 2) The City of Huntington Beach will offer to purchase any remnant considered by the City of Huntington Beach to be an uneconomic unit which is owned by you or, if applicable, occupied by you as a tenant and which is contiguous to the land being conveyed.
- 3) All buildings, structures, and other improvements affixed to the land described in the referenced documents covering this transaction and owned by the grantors herein or, if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The interests to be acquired are a fee simple absolute and a temporary construction easement. The fee simple parcel being purchased comprises 1,540 square feet and is described in the attached legal description and outlined on the attached map. The temporary construction easement is a 77 feet by less than 5 feet strip immediately south of the Parcel.
- 4) The amount determined to be just compensation was determined upon consideration of the applicable legal principles and after consideration of an appraisal of the fair market value of the Parcel. The basis for the amount determined to be just compensation is summarized on the attached Valuation and Appraisal Summary Statement. Such amount:
 - a. Exceeds the full amount that the City of Huntington Beach believes to be just compensation;
 - b. Is no less than the full amount of the City's approved appraisal of fair market value for the property to be purchased;
 - c. Disregards any decrease or increase in the fair market value of the real property proposed to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or the likelihood that the property would be acquired for such public improvement, other than due to physical deterioration within the reasonable control of the Owner or occupant; and

- d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the Owner is entitled to receive under an agreement with the City of Huntington Beach.

If you ultimately elect to reject the offer of the City of Huntington Beach for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.

Dated: 11/13/06



Steve Holtz
Real Property Manager

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**Valuation and Appraisal Summary Statement
For 7802 Garfield Avenue, Huntington Beach, California,
APN: 159-151-01 (Fidencio and Vivian Alvarez)
Government Code § 7267.2**

The following is a summary of the analysis and basis for the amount that the City of Huntington Beach believes to be just compensation, which amount was derived from an appraisal as approved by the City of Huntington Beach, in conjunction with consideration of applicable principles of law. A statement of the appraisal process and applicable principles of law, which form the basis for the valuation conclusions and offer to purchase is as follows:

Property Data

Date of Valuation Used: August 18, 2006

Project: Garfield Street Widening

APN: 159-151-01

Record Owner: Fidencio Alvarez and Vivian O. Alvarez, Trustees of the Revocable Living Trust of Fidencio Alvarez and Vivian O. Alvarez

Address/location: 7802 Garfield Avenue, Huntington Beach, California

Property to be acquired: Fee Simple and Temporary Construction Easement

The proposed acquisition is part of an entire ownership.

The area of the entire lot is 21,560 square feet. The area of the fee simple parcel proposed to be acquired is the northerly 20 feet adjacent to Garfield Avenue, comprising 1,540 sq. ft. The area of the temporary construction easement is less than 385 sq. ft., and is a less than 5 foot strip lying south of the fee simple parcel.

Improvements to the entire parcel include a single family home of 3,707 sq. ft. of living area, garage, deck & patio. The improvements to the property to be acquired are asphalt pavement, dirt, plants and a palm tree.

Topography: Flat Shape: Rectangular

Access: Garfield and Safeharbor Lane (Private)

Environmental Conditions: The valuation is premised on the assumption that the property is free and clear of contamination

Highest and Best Use Analysis

Highest and best use is defined as the reasonably probable and legal use of land which is legally permissible, physically possible, and financially feasible that results in the highest value.

Highest and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished. The results of the highest and best use analysis are:

Zoning: RM (Medium Density Residential)

Present Use: Single Family Residence

Highest and Best Use of Property to be acquired:

If subject to dedication: Unbuildable Open Space

If not subject to dedication: Medium Density Residential (Up to 7 units)

Valuation Analysis:

The sales comparison approach was used as the best indication of market value. The sales comparison approach is one of the three accepted approaches to value. The income capitalization approach and the cost approach were not considered to be applicable to this appraisal problem.

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison. This is the preferred method of valuation when comparable sales data are available. The sales comparison approach was based on the consideration of comparable sales which sold within a reasonable time of the date of valuation.

To determine the value of the property to be acquired, if not subject to dedication, only unimproved properties with similar zoning which sold with a reasonable time of the date of valuation were considered. The parcels believed to be most similar in physical and locational characteristics ranged from 43,692 sq. ft. with a potential for 13 units, to 7,590 sq. ft. with a potential for two units. The prices, adjusted according to location and to account for market changes since the time of their sale, ranged from \$80.35 to \$89.15 per sq. ft. of land. Based upon its highest and best use, if not subject to dedication, as if vacant, as of August 18, 2006, the appraiser believes the property has a value of \$85 per square foot.

In addition, the parcel to be acquired is improved with vegetation and paving. The value of the landscaping was determined by the appraiser to be \$8,750 for the entire parcel.

It also is expected that a temporary construction easement of less than five feet of width will be required during the three months of construction. The temporary easement is valued at 10% of the fair market value of the property for each year of use. Three months is only $\frac{1}{4}$ of a year; therefore, the value of the construction easement is $\$85/\text{sq. ft.} \times 10\% \times 25\% = \$2.13/\text{sq. ft.}$

Huntington Beach Zoning Code Section 230.84(A) requires that “[p]rior to issuance of a building permit ... all real property shall be dedicated . . . which the City requires for streets. . . .” Section 230.84(B) exempts from said dedication requirement certain alterations or additions that “do not exceed a third of the value of a building....” Section 230.84(C) then specifies the dedication shall be according to the Department of Public Works “standard plans” or “a precise plan of street, highway or alley alignment.” The plans that Public Works follows are the General Plan Circulation Element, specifically Figures CE-13 and CE-3. Figure CE-13 depicts Garfield as a four lane primary street with a median, requiring a right-of-way of 100 feet, and Figure CE-3 takes into account growth through 2010, and requires a six lane divided street of 120 feet. The 20 foot deep parcel to be acquired is for a 100 feet wide street.

In August, 2001, plans were submitted for issuance of a building permit at 7802 Garfield to demolish existing 1972 SF 3 bedroom structure and rebuild the residence to include a 3707 SF 4 bedroom, 825 SF garage, 86 SF deck and 88 SF patio. The City notified the owners of the above dedication requirements, and the owners acknowledged and agreed to dedicate land “necessary for future street widening and sidewalk improvements” prior to obtaining a final building inspection. However, the owners never requested a final inspection, and the dedication was never effected.

Under existing legal authorities, in order for the dedication to be lawful, it must have some reasonable connection or “nexus” to the particular development to be undertaken. In this instance, the 20 feet of property to be acquired, and sought for dedication, includes 12 feet for additional roadway and 8 feet for curb, gutter, and sidewalk.

While the City of Huntington Beach believes that the entire 20 feet of property to be acquired is, and was at the time of the referenced building permit and development, subject to lawful dedication, it does recognize that this issue, at least for some portion of said property, may be subject to some uncertainty under the applicable legal authorities. If all 20 feet of property was subject to dedication in connection with the construction undertaken pursuant to the building permit issued in 2001, just compensation for the land acquired would be zero. If only the 8 feet for curb, gutter and sidewalk was subject to dedication, just compensation would be \$85/sq.ft for the remaining 12 feet of the land acquired.

In recognition of said legal uncertainty, and in the interest of acquiring the property by negotiated agreement without the necessity of litigation, the City of Huntington Beach is offering to acquire said property for an amount that is greater than what it believes constitutes just compensation. Specifically, the City is offering to acquire said property as if only the 8 feet for curb, gutter and sidewalk were subject to lawful dedication. Based thereupon, the City’s offer to purchase is calculated as follows:

Valuation Conclusions and Offer to Purchase:

Land taken:

For the 12 feet acquired for additional roadway
(77 ft x 12 ft = 924 sq.ft. @ \$85/sq.ft = \$78,540) \$78,540

For the 8 feet acquired for curb, gutter & sidewalk \$ - 0 -

Improvements:

Asphaltic concrete paving, dirt, assorted shrubs and palm tree \$ 8,750

Temporary Construction Easement:

77 ft x 5 ft = 385 sq.ft. for 3 months @ \$2.13/sq.ft \$820.05

Total: \$88,110.05

This offer is made without prejudice and with the express notation that, if the property cannot be acquired by negotiated agreement and should the City elect to proceed by way of an action in eminent domain, the City of Huntington Beach will assert, based upon its understanding and interpretation of applicable legal authorities, that the entire 20 feet of property to be acquired is subject to lawful dedication, and should thus be valued at zero.

Severance Damages:

In addition, in establishing the amount believed to be just compensation, the City of Huntington Beach derived from said appraisal whether or not there were damages and benefits to the remaining property. The basis for this determination is whether or not the remainder had been diminished in value by reason of the acquisition of the Parcel being acquired and the construction of the improvement in the manner proposed (severance damage and, if so, whether the same remainder had been increased in value by reason of the construction of the improvement in the manner proposed (benefits). If there are no severance damages, then whether there is a benefit is inapplicable since benefits can only be offset against severance damages by reason of California valuation law.

In this case, there are no severance damages, principally because the same intensity of development can be accommodated on the entire parcel regardless of whether it is reduced by the amount of the take or not.

Cal. Admin. Code, Title 25, Section 6182(f) Notification:

You are further advised that in addition to the information already provided in this Summary, California *Code of Regulations*, Title 25, Div. 1, §6182(f) provides that after receiving the public entity's offer, the Owner may request and the public entity shall provide:

- 1) The identification of some of the market transactions (e.g. sales, contracts to sell and purchase, leases to the extent that the determination of just compensation was based thereon) together with the names and addresses, if known, of the parties to

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the transaction, the location of the property subject to the transaction, the date of the transaction, and the price and other significant terms and circumstances of the transaction, if known.

Said information will be provided upon written request of the Owner made prior to the commencement of any eminent domain proceeding.

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Contract of Acquisition
(APN 159-151-01)
Government Code §§7267.1 and 7267.2(a)
Acquisition of Property by Negotiation

Fidencio Alvarez and Vivian O. Alvarez (hereinafter referred to as Grantors) will conditionally deliver an executed Grant Deed conveying the property described and depicted in the attached Exhibits A & B (hereinafter referred to as the Parcel) to the City of Huntington Beach (hereinafter referred to as Grantee).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1.
 - A. Grantee requires the Parcel, a property not now appropriated to a public use, for the construction of a public improvement described as the widening and improvement of Garfield Avenue, a public use.
 - B. Because Grantee may exercise the power of eminent domain to acquire, Grantors are compelled to sell; and because Grantee requires the property for the described public use, Grantee is compelled to buy. As such, the acquisition of the Parcel is an involuntary conversion of the Parcel from private to public use.
 - C. Both Grantors and Grantee recognize the expense, time, effort, and risk to both Grantors and Grantee in resolving a dispute over compensation for the Parcel by eminent domain litigation; and the compensation set forth herein is in compromise and settlement, in lieu of such litigation.
 - D. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said Grant Deed and shall relieve Grantee of all further obligation or claims of whatever kind or nature on this account, or on account of the construction of the proposed public improvement in the manner proposed, including, but not limited to, claims arising out of its location, grade, or restriction of private access rights. Grantors acknowledge that Grantee has informed Grantors as to the plans for the construction of the proposed public improvement in the manner proposed.
2. Grantee shall:
 - A. Open an escrow and provide escrow instructions to the escrow holder to carry out the terms of this Agreement. Grantee shall pay all escrow and recording fees incurred in this transaction. Grantee shall deposit said conditionally delivered Grant Deed together with the sum provided in Paragraph 2.B. into the escrow. The escrow holder shall be authorized and Grantors shall be entitled to the disbursement of the sum deposited in said escrow less any amounts payable to any other person having an

interest in the Parcel when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. or when Grantee otherwise consents to title vesting Grantee. Grantors shall not be entitled to receive any of said net payment and the escrow holder shall not be authorized to disburse said proceeds until:

- 1) All holders of liens and encumbrances on the Parcel have received full payment for all principal and interest due to them or have consented to payment to the Grantors and have executed reconveyance of their interest in the Parcel;
- 2) All other parties having interest in have received payment therefore or have consented to a payment to Grantors; and
- 3) The City of Huntington Beach has acknowledged in writing that it concurs that all other parties having interest in the Parcel have received full payment or have consented to disbursement to Grantors.

The escrow holder shall be authorized to deliver unconditionally said Grant Deed to Grantee either when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. herein or when Grantee otherwise consents to title vesting Grantee.

The escrow shall remain open until either a) all of the conditions of said escrow have been met, or b) in the event that a dispute arises during the course of the escrow, then until either a settlement has been reached or this agreement is terminated or a final order of condemnation under §1268.030 of the California *Code of Civil Procedure* is entered by the Court. Any sum disbursed to Grantors from this escrow shall be deducted from the ultimate amount received by Grantors as a result of any settlement, award, or verdict of just compensation for the Parcel

B. Pay the undersigned Grantors the sum of \$88,110.05 for the property or interest conveyed by said Grant Deed when title to said property vests in the City of Huntington Beach free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except:

- 1) Taxes for the tax year in which the escrow closes shall be cleared and paid in the manner required by §5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.

2) Covenants, conditions, restrictions and reservations of record, or contained in said Grant Deed.

3) Easements or rights of way over said land for public or quasi-public street purposes, if any.

C. Pay all escrow and recording fees incurred in this transaction, and, if title insurance is desired by Grantee, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax.

D. Have the authority to instruct the escrow holder to deduct and pay from the amount shown in Paragraph 2.B. above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.

E. Shall have the irrevocable right to take possession of the Parcel five (5) days after the deposit of the sum provided in Paragraph 2.B. into escrow.

3. While Grantors and Grantee anticipate that escrow will close as provided herein, in the event that a dispute arises during the course of said escrow between Grantors, Grantee and/or the escrow holder, or between Grantors and any third-party claimant to any or all of the proceeds of said escrow, and it becomes necessary for Grantee to file a condemnation action then:

A. Grantee shall remain in possession and the compensation provided for in this agreement shall draw interest as prescribed at the apportionment rate calculated by the Controller as the rate of earning by the Surplus Money Investment Fund for each six-month period. Grantors shall be entitled to receive interest on the sum received as compensation pursuant to this agreement for Grantors' interest in the Parcel beginning at the date of possession provided for in Paragraph 2.E. herein.

B. Grantors waive all claims and defenses challenging Grantee's right to acquire the Parcel by eminent domain in the event that Grantee files any subsequent eminent domain proceeding, and agrees that the City of Huntington Beach has the right to acquire the Parcel by eminent domain and that the public interest and necessity require the project; the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; the Property is necessary for the project; and an offer in an amount no less than the full amount of the City of Huntington Beach's approved appraisal was made to Grantors. Grantors agree that the total amount of compensation that shall be

awarded is the sum provided in Paragraph 2 plus interest as provided in Paragraph 3.A. herein.

IN WITNESS WHEREOF, the Parties have executed this agreement on _____ at _____, State of California.

Grantor _____
Fidencio Alvarez

Grantor _____
Vivian O. Alvarez

Grantee, City of Huntington Beach

By _____
Its duly authorized representative

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 (Domestic Mail Only; No Insurance Coverage Provided)

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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11-15-04

Sent To: Michael M. Leifer
Palmieri Tyler Wiener Wilhelm &
Waldron, LLP
 Street, Apt. No. or PO Box No. 2603 Main St, East Tower, Ste 1300
 City, State, ZIP+4 Irvine, CA 92614-6228

PS Form 3800, June 2002 See Reverse for Instructions

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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <u>X</u> <u>Two</u> <u>C</u> <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p><u>Michael M. Leifer</u> <u>Palmieri Tyler Wiener Wilhelm &</u> <u>Waldron, LLP</u> <u>2603 Main St, East Tower, Ste 1300</u> <u>Irvine, CA 92614-6228</u></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number _____ (Transfer from service label)</p>	<p>7003 3110 0000 1859 6741</p>

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ATTACHMENT 3

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Jennifer McGrath
City Attorney

OFFICE OF
CITY ATTORNEY

P.O. Box 190
2000 Main Street
Huntington Beach, California 92648
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr. Deputy City Attorney
John Fujii, Deputy City Attorney
Teresa Judd, Deputy City Attorney
Leonie Mulvihill, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Mike Vigliotta, Deputy City Attorney

November 15, 2006

Michael M. Leifer
Palmieri Tyler Wiener Wilhelm & Waldron, LLP
2603 Main Street
East Tower, Suite 1300
Irvine, CA 92614-6228

Re: Assessor's Parcel No. 159-151-02
(7802 Garfield Ave., Huntington Beach, California)

Dear Mr. Leifer:

The staff of the City of Huntington Beach is proposing to recommend to the City Council the acquisition of 20 feet of right-of-way from the above Parcel for the widening of Garfield Avenue. The street will be widened to permit four travel lanes, a median, on-street parking, bicycle lanes and curb, gutter and sidewalk.

We understand from a title search that your client, Constance M. Alvarez, is the owner of the property located at 7802 Garfield, identified by the County Assessor as Parcel No. 159-151-02. The property is within the street widening area; a legal description and plat map of the portion of the above Parcel under consideration for acquisition are attached to the enclosed Offer to Purchase.

While Staff proposes to recommend the acquisition of the described property to the City Council of the City of Huntington Beach for this project, no decision to acquire can be made until the City Council formally acts to approve this acquisition. Nothing in this letter is meant to pre-commit the City Council or otherwise limit the options available to the City Council. Consequently the enclosed Offer, if accepted, and the acquisition of the described property are conditional upon and require the approval of the City Council.

It is our sincere desire that the described property can be acquired amicably, expeditiously, and by negotiation, with the approval of City Council. To this end,

Michael M. Leifer

Re: Assessor's Parcel No. 159-151-02

November 15, 2006

Page 2

California *Government Code* §7267.2(a) provides that *prior to* initiating negotiations for the acquisition of real property that the City of Huntington Beach shall:

- Make an offer to the Owner of record to acquire the property for the full amount that the public entity has established as just compensation;
- Which offer is not less than the public entity's appraisal of the fair market value of the property; and
- Provide the Owner with a written statement of, and summary of the basis for, the amount the City of Huntington Beach established as just compensation.

As you will note from the enclosed Offer to Purchase and Valuation and Appraisal Summary Statement, the City of Huntington Beach is offering an amount that is greater than the amount that it believes would constitute just compensation if the entire 20 feet of property to be acquired is lawfully subject dedication. The City does this in an effort to acquire the property by negotiated agreement and to avoid litigation, and it should not be deemed an admission of value. As such, in the event the property cannot be acquired by negotiated agreement and the City should elect to proceed by way of an action in eminent domain, the City will assert that the entire 20 feet of property is lawfully subject to dedication.

Also enclosed herewith is a proposed Contract of Acquisition which your client will be asked to sign if she accepts the City's Offer.

After you have had an opportunity to review the City's offer with your client, I will be contacting you to discuss the matter. Should you have any questions, or wish to discuss the matter before you hear from me, do not hesitate to call.

Very truly yours,



Neal Moore
Sr. Deputy City Attorney

NM:cl

Offer to Purchase
(APN 159-151-02)
(Govt. Code Sections 7267.1 and 7267(a))

The City of Huntington Beach is proposing to widen and upgrade Garfield Avenue. This project will necessitate acquiring an additional 20 feet of right-of way along the southern side of Garfield Avenue. Attached hereto as Exhibits A and B are the Legal Description and Plat map for Right-of-Way Acquisition of the property (herein after called the "Parcel") that the City proposes acquiring for this project. A review of the Orange County Public Records reveals that title to said Parcel is vested in Constance M. Alvarez.

The City of Huntington Beach proposes to acquire for the project all rights in the Parcel in fee simple interest.

The City of Huntington Beach anticipates that the construction of the public improvements along Garfield and within the Parcel may necessitate intermittent use of the property immediately adjacent and south of said Parcel. For this purpose, the City proposes acquiring a temporary construction easement of less than five (5) feet of property immediately adjacent and south of said Parcel for a period of three (3) months during construction.

The City of Huntington Beach offers to pay the sum of **\$54,600.00** for the acquisition of said Parcel, and improvements thereon, an amount that the City believes is greater than what would constitute just compensation under applicable legal authorities. This offer is made with the express notation that, if it is not accepted and the property cannot be acquired by negotiated agreement, and should the City elect to proceed by way of an action in eminent domain, this offer shall not be considered or deemed an admission of what constitutes just compensation under applicable legal authorities.

The City of Huntington Beach also offers to pay the sum of **\$532.50** for the above-described temporary construction easement, an amount that the City believes constitutes just compensation.

This offer is conditional upon the Huntington Beach City Council ratifying the offer by formal action taken at a regular public meeting authorizing the execution of a Contract of Acquisition or adopting a Resolution of Necessity, or both.

When property is sold to the City of Huntington Beach, there is the same obligation as in a private transaction for the Owner to pay in escrow the amounts needed to remove any existing liens and encumbrances. In the event that you decide to accept the offer, it is recommended that you contact directly the persons, if any, to whom you may be making payments under trust deeds or other liens, and reach an agreement with them as to the amount of money they will demand, if any, in escrow to clear the property being acquired of these liens and encumbrances. In the event that there are liens and encumbrances, the Owner shall either:

- (1) Pay to Owners of liens and encumbrances, out of the approved compensation paid by the City of Huntington Beach, the amount needed to terminate leases or cancel trust deeds, mortgages, or other liens affecting the property acquired, or
- (2) Arrange for holders of leases, trust deeds, mortgages, or other liens to quitclaim their interest, if any, to the Parcel being acquired.

Similarly, when an Owner sells his/her property to the City of Huntington Beach, the Owner's obligation to pay current and past due property taxes is the same as if the Owner were selling to a private individual.

However, you, as an Owner, will not be required to pay recording fees, transfer taxes, or the *pro rata* portion of real property taxes which are allocable to any period after the passage of title or possession to the City of Huntington Beach.

If you have any questions in regard to this offer, please contact Neal Moore at (714) 375-8452.

Exhibit A

Legal Description

The North 20.00 feet, of the West 41.00 feet of Lot 3 and the North 20.00 feet, of the East one-half of Lot 2, both of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

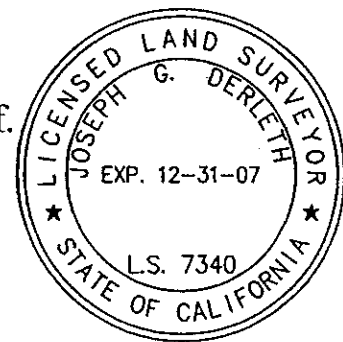
Excepting therefrom the North 170.00 feet, of the West 50.00 of said East one-half of said Lot 2.

Also excepting therefrom an undivided one-half interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, and the right to enter in and upon the premises at any time to drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed recorded June 26, 1944, in Book 1256, page 258 of Official Records, of said County

Also excepting therefrom an undivided one-half interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, and the right to enter in and upon the premises at any time to drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed recorded February 27, 1958 in Book 4210, page 222 of Official Records, of said County.

Containing 1000.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.



DRAFT

Joseph G. Derleth
PLS 7340, expires 12/31/07

Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-02

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

D3 . 55



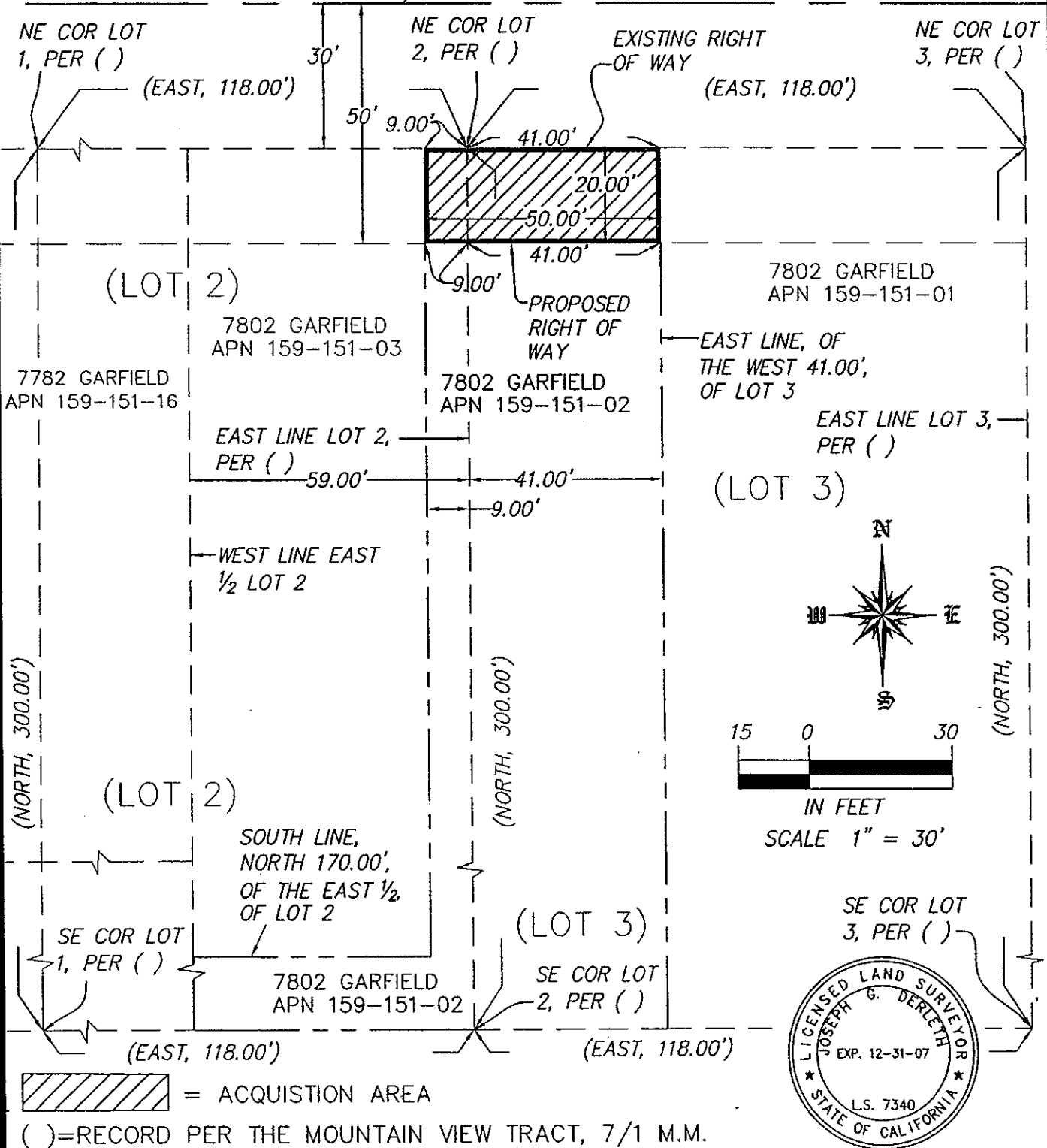
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Exhibit B

CL GARFIELD AVENUE



Plat for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-02

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

D3.56



CONVENTIONALL
LEFT
PLATE

**Summary Statement Accompanying Government Code § 7267.2(a)
Offer Relating to Acquisition Procedures for Purchase
of Real Property At 7802 Garfield Avenue, Huntington Beach,
California, APN: 159-151-02 (Constance M. Alvarez)**

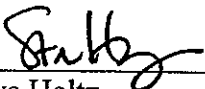
The California Relocation Assistance and Real Property Acquisition Guidelines provide that each Owner from whom the City of Huntington Beach purchases real property or an interest therein, or each tenant owning improvements on said property, be provided the following information which may or may not be applicable to your property and this proposed acquisition.

- 1) You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
- 2) The City of Huntington Beach will offer to purchase any remnant considered by the City of Huntington Beach to be an uneconomic unit which is owned by you or, if applicable, occupied by you as a tenant and which is contiguous to the land being conveyed.
- 3) All buildings, structures, and other improvements affixed to the land described in the referenced documents covering this transaction and owned by the grantors herein or, if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The interests to be acquired are a fee simple absolute and a temporary construction easement. The fee simple parcel being purchased comprises 1,000 square feet and is described in the attached legal description and outlined on the attached map. The temporary construction easement is a 50 feet by less than 5 feet strip immediately south of the Parcel.
- 4) The amount determined to be just compensation was determined after consideration of an appraisal of the fair market value of the Parcel. The basis for the amount determined to be just compensation is summarized on the attached Statement of the Amount Established as Just Compensation and Appraisal Summary Statement. Such amount:
 - a. Exceeds the full amount that the City of Huntington Beach believes to be just compensation;
 - b. Is no less than the full amount of the City's approved appraisal of fair market value for the property to be purchased;
 - c. Disregards any decrease or increase in the fair market value of the real property proposed to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or the likelihood that the property would be acquired for such public improvement, other than due to physical deterioration within the reasonable control of the Owner or occupant; and

- d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the Owner is entitled to receive under an agreement with the City of Huntington Beach.

If you ultimately elect to reject the offer of the City of Huntington Beach for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.

Dated: 11/13/06



Steve Holtz
Real Property Manager

Valuation and Appraisal Summary Statement
For 7802 Garfield Avenue, Huntington Beach, California,
APN: 159-151-02 (Constance M. Alvarez)
Government Code § 7267.2

The following is a summary of the analysis and basis for the amount that the City of Huntington Beach believes to be just compensation, which amount was derived from an appraisal as approved by the City of Huntington Beach, in conjunction with consideration of applicable principles of law. A statement of the appraisal process and applicable principles of law, which forms the basis for the valuation conclusions and offer to purchase, is as follows.

Property Data

Date of Valuation Used: May 17, 2006

Project: Garfield Street Widening

APN: 159-151-02

Record Owner: Constance M. Alvarez

Address/location: 7802 Garfield Avenue, Huntington Beach, California

Property to be acquired: Fee Simple and Temporary Construction Easement

The proposed acquisition is part of an entire ownership.

The area of the entire lot is 21,500 square feet. The fee simple parcel being purchased is the northerly 20 feet adjacent to Garfield Avenue, comprising 1,000 square feet. The temporary construction easement is a 50 feet by less than 5 feet strip immediately south of the fee simple parcel.

Improvements to the entire parcel include a small residential structure in poor condition that contributes no value to the land.

Topography: Flat Shape: Irregular

Access: Garfield

Environmental Conditions: The valuation is premised on the assumption that the property is free and clear of contamination

Highest and Best Use Analysis

Highest and best use is defined as the reasonably probable and legal use of land which is legally permissible, physically possible, and financially feasible that results in the highest value.

Highest and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished. The results of the highest and best use analysis are:

Zoning: RM (Medium Density Residential)

Present Use of Property to be Acquired: Vacant. There is a small residential structure on the remaining portion of property that is in poor condition and contributes no value to the land.

Highest and Best Legal Use of Property:

If subject to dedication: Unbuildable Open Space

If not subject to dedication: Medium Density Residential (Up to 7 units)

Valuation Analysis:

The sales comparison approach was used as the best indication of market value. The sales comparison approach is one of the three accepted approaches to value. The income capitalization approach and the cost approach were not considered to be applicable to this appraisal problem.

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison. This is the preferred method of valuation when comparable sales data are available. The sales comparison approach was based on the consideration of comparable sales which sold within a reasonable time of the date of valuation.

To determine the value of the property to be acquired based upon a highest and best use of Medium Density Residential, only unimproved properties with similar zoning which sold with a reasonable time of the date of valuation were considered. The parcels believed to be most similar in physical and locational characteristics ranged from 43,692 sq. ft. with a potential for 13 units, to 7,590 sq. ft. with a potential for two units. The prices, adjusted according to location and to account for market changes since the time of their sale, ranged from \$82.35 to \$87.84 per sq. ft. of land. Based upon its highest and best use, if not subject to dedication, as if vacant, as of May 17, 2006, the appraiser believes the property has a value of \$85 per square foot.

It also is expected that a temporary construction easement of less than five feet of width will be required during the three months of construction. The temporary easement is valued at 10% of the fair market value of the property for each year of use. Three months is only $\frac{1}{4}$ of a year; therefore, the value of the construction easement is $\$85/\text{sq. ft.} \times 10\% \times 25\% = \$2.13/\text{sq. ft.}$

Huntington Beach Zoning Code Section 230.84(A) requires that "[p]rior to issuance of a building permit ... all real property shall be dedicated ... which the City requires for streets. . . ."

Section 230.84(B) exempts from said dedication requirement certain alterations or additions that “do not exceed a third of the value of a building....” Section 230.84(C) then specifies the dedication shall be according to the Department of Public Works “standard plans” or “a precise plan of street, highway or alley alignment.” The plans that Public Works follows are the General Plan Circulation Element, specifically Figures CE-13 and CE-3. Figure CE-13 depicts Garfield as a four lane primary street with a median, requiring a right-of-way of 100 feet, and Figure CE-3 takes into account growth through 2010, and requires a six lane divided street of 120 feet. The 20 foot deep parcel to be acquired is for a 100 feet wide street.

Under existing legal authorities, in order for said dedication to be lawful, it must have some reasonable connection or “nexus” to the particular development to be undertaken. In this instance, the 20 feet of property to be acquired, and which would be sought for dedication upon development, includes 12 feet for additional roadway and 8 feet for curb, gutter, and sidewalk.

To the extent that the 20 feet of property to be acquired would be subject lawful dedication, its value, for purposes of determining just compensation, is limited to its value in its current undeveloped state “because it [can] never be used for any other purpose.” *City of Porterville v. Young* (1987) 195 Cal.App.3d 1260, 1269 [See also *Contra Costa County Flood Control etc. v. Lone Tree Investments* (1992) 7 Cal.App.4th 930, 933-6] Such property was valued by the City’s appraiser as “open space” or “unbuildable” land. Sales of similar “unbuildable” lots were identified, and ranged from \$5.36 to \$8.93 per sq. ft. of land. Based thereupon, the appraiser believes that said property, if “unbuildable” and valued as “open space,” has a value of \$9 per square foot.

While the City of Huntington Beach believes that the entire 20 feet of property to be acquired would be subject to dedication at the time of its development, and thus should be valued at \$9 sq. ft. in its current undeveloped condition, it does recognize that this issue, at least for some portion of said property, may be subject to some uncertainty under applicable legal authorities. If all 20 feet of property would lawfully be subject to dedication, just compensation of all the property to be acquired would be \$9 sq. ft. If only the 8 feet for curb, gutter and sidewalk would lawfully be subject to dedication, just compensation for the remaining 12 feet would be \$85/sq.ft. based upon a highest and best use of Medium Density Residential.

In recognition of said legal uncertainty, and in the interest of acquiring the property by negotiated agreement without the necessity of litigation, the City of Huntington Beach is offering to acquire said property for an amount that is greater than what it believes constitutes just compensation. Specifically, the City is offering to acquire said property as if only the 8 feet for curb, gutter and sidewalk were subject to lawful dedication. Based thereupon, the City’s offer to purchase is calculated as follows:

Valuation Conclusions and Offer to Purchase:

Land taken:

For the 12 feet acquired for additional roadway (50 ft x 12 ft = 600 sq.ft. @ \$85/sq.ft = \$51,000)	\$51,000
---	----------

For the 8 feet acquired for curb, gutter & sidewalk
(50 ft x 8 ft = 400 sq.ft. @ \$9/sq.ft. = \$3,600) \$ 3,600

Temporary Construction Easement:

(50 feet x 5 feet = 250 sq.ft. for 3 months @ \$2.13/sq.ft. \$ 532.50

Total \$55,132.50

This offer is made without prejudice and with the express notation that, if the property cannot be acquired by negotiated agreement and should the City elect to proceed by way of an action in eminent domain, the City of Huntington Beach will assert, based upon its understanding and interpretation of applicable legal authorities, that the entire 20 feet of property to be acquired is subject to lawful dedication, and should thus be valued at \$9 a square foot.

Severance Damages:

In addition, in establishing the amount believed to be just compensation, the City of Huntington Beach derived from said appraisal whether or not there were damages and benefits to the remaining property. The basis for this determination is whether or not the remainder had been diminished in value by reason of the acquisition of the Parcel being acquired and the construction of the improvement in the manner proposed (severance damage and, if so, whether the same remainder had been increased in value by reason of the construction of the improvement in the manner proposed (benefits). If there are no severance damages, then whether there is a benefit is inapplicable since benefits can only be offset against severance damages by reason of California valuation law.

In this case, there are no severance damages, principally because the same intensity of development can be accommodated on the entire parcel regardless of whether it is reduced by the amount of the take or not.

Cal. Admin. Code, Title 25, Section 6182(f) Notification:

You are further advised that in addition to the information already provided in this Summary, California *Code of Regulations*, Title 25, Div. 1, §6182(f) provides that after receiving the public entity's offer, the Owner may request prior to the commencement of an eminent domain proceeding and the public entity shall provide:

- 1) The identification of some of the market transactions (e.g. sales, contracts to sell and purchase, leases to the extent that the determination of just compensation was based thereon) together with the names and addresses, if known, of the parties to the transaction, the location of the property subject to the transaction, the date of the transaction, and the price and other significant terms and circumstances of the transaction.

Said information will be provided upon written request of the Owner made prior to the commencement of any eminent domain proceeding.

Contract of Acquisition
(APN 159-151-02)
Government Code §§7267.1 and 7267.2(a)
Acquisition of Property by Negotiation

Constance M. Alvarez (hereinafter referred to as Grantor) will conditionally deliver an executed Grant Deed conveying the property described and depicted in the attached Exhibits A & B (hereinafter referred to as the Parcel) to the City of Huntington Beach (hereinafter referred to as Grantee).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1.
 - A. Grantee requires the Parcel, a property not now appropriated to a public use, for the construction of a public improvement described as the widening and improvement of Garfield Avenue, a public use.
 - B. Because Grantee may exercise the power of eminent domain to acquire, Grantor is compelled to sell; and because Grantee requires the property for the described public use, Grantee is compelled to buy. As such, the acquisition of the Parcel is an involuntary conversion of the Parcel from private to public use.
 - C. Both Grantor and Grantee recognize the expense, time, effort, and risk to both Grantor and Grantee in resolving a dispute over compensation for the Parcel by eminent domain litigation; and the compensation set forth herein is in compromise and settlement, in lieu of such litigation.
 - D. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said Grant Deed and shall relieve Grantee of all further obligation or claims of whatever kind or nature on this account, or on account of the construction of the proposed public improvement in the manner proposed, including, but not limited to, claims arising out of its location, grade, or restriction of private access rights. Grantor acknowledges that Grantee has informed Grantor as to the plans for the construction of the proposed public improvement in the manner proposed.
2. Grantee shall:
 - A. Open an escrow and provide escrow instructions to the escrow holder to carry out the terms of this Agreement. Grantee shall pay all escrow and recording fees incurred in this transaction. Grantee shall deposit said conditionally delivered Grant Deed together with the sum provided in Paragraph 2.B. into the escrow. The escrow holder shall be authorized and Grantor shall be entitled to the disbursement of the sum deposited in said escrow less any amounts payable to any other person having an

interest in the Parcel when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. or when Grantee otherwise consents to title vesting Grantee. Grantor shall not be entitled to receive any of said net payment and the escrow holder shall not be authorized to disburse said proceeds until:

- 1) All holders of liens and encumbrances on the Parcel have received full payment for all principal and interest due to them or have consented to payment to the Grantor and have executed reconveyance of their interest in the Parcel;
- 2) All other parties having interest in have received payment therefore or have consented to a payment to Grantor; and
- 3) The City of Huntington Beach has acknowledged in writing that it concurs that all other parties having interest in the Parcel have received full payment or have consented to disbursement to Grantor.

The escrow holder shall be authorized to deliver unconditionally said Grant Deed to Grantee either when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. herein or when Grantee otherwise consents to title vesting Grantee.

The escrow shall remain open until either a) all of the conditions of said escrow have been met, or b) in the event that a dispute arises during the course of the escrow, then until either a settlement has been reached or this agreement is terminated or a final order of condemnation under §1268.030 of the California *Code of Civil Procedure* is entered by the Court. Any sum disbursed to Grantor from this escrow shall be deducted from the ultimate amount received by Grantor as a result of any settlement, award, or verdict of just compensation for the Parcel

- B. Pay the undersigned Grantor the sum of \$55,132.50 for the property or interest conveyed by said Grant Deed when title to said property vests in the City of Huntington Beach free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes; except:
 - 1) Taxes for the tax year in which the escrow closes shall be cleared and paid in the manner required by §5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.

- 2) Covenants, conditions, restrictions and reservations of record, or contained in said Grant Deed.
 - 3) Easements or rights of way over said land for public or quasi-public street purposes, if any.
- C. Pay all escrow and recording fees incurred in this transaction, and, if title insurance is desired by Grantee, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax.
 - D. Have the authority to instruct the escrow holder to deduct and pay from the amount shown in Paragraph 2.B. above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.
 - E. Shall have the irrevocable right to take possession of the Parcel five (5) days after the deposit of the sum provided in Paragraph 2.B. into escrow.
3. While Grantor and Grantee anticipate that escrow will close as provided herein, in the event that a dispute arises during the course of said escrow between Grantor, Grantee and/or the escrow holder, or between Grantor and any third-party claimant to any or all of the proceeds of said escrow, and it becomes necessary for Grantee to file a condemnation action then:
- A. Grantee shall remain in possession and the compensation provided for in this agreement shall draw interest as prescribed at the apportionment rate calculated by the Controller as the rate of earning by the Surplus Money Investment Fund for each six-month period. Grantor shall be entitled to receive interest on the sum received as compensation pursuant to this agreement for Grantor's interest in the Parcel beginning at the date of possession provided for in Paragraph 2.E. herein.
 - B. Grantor waives all claims and defenses challenging Grantee's right to acquire the Parcel by eminent domain in the event that Grantee files any subsequent eminent domain proceeding, and agrees that the City of Huntington Beach has the right to acquire the Parcel by eminent domain and that the public interest and necessity require the project; the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; the Property is necessary for the project; and an offer in an amount no less than the full amount of the City of Huntington Beach's approved appraisal was made to Grantor. Grantor agrees that the total amount of compensation that shall be

awarded is the sum provided in Paragraph 2 plus interest as provided in Paragraph 3.A. herein.

IN WITNESS WHEREOF, the Parties have executed this agreement on _____ at _____, State of California.

Grantor _____
Constance M. Alvarez

Grantee, City of Huntington Beach

By: _____
Its duly authorized representative

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

7002 2410 0002 2299 4884

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

11-15-06

Michael M. Leifer

Sent To: Palmieri Tyler Wiener Wilhelm & Waldron, LLP
 Street, Apt. No., or PO Box No. 2603 Main St, East Tower, Ste 1300
 City, State, ZIP+4 Irvine, CA 92614-6228

PS Form 3800, June 2002

See Reverse for Instructions

D3 . 67

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return this card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael M. Leifer
 Palmieri Tyler Wiener Wilhelm & Waldron, LLP
 2603 Main St, East Tower, Ste 1300
 Irvine, CA 92614-6228

2. Article Number _____
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Michael M. Leifer*

☐ Agent
☐ Address

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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ATTACHMENT 4

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Jennifer McGrath
City Attorney

**OFFICE OF
CITY ATTORNEY**

**P.O. Box 190
2000 Main Street
Huntington Beach, California 92648**
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

**Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr. Deputy City Attorney
John Fujii, Deputy City Attorney
Teresa Judd, Deputy City Attorney
Leonie Mulvihill, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Mike Vigliotta, Deputy City Attorney**

November 15, 2006

Michael M. Leifer
Palmieri Tyler Wiener Wilhelm & Waldron, LLP
2603 Main Street
East Tower, Suite 1300
Irvine, CA 92614-6228

Re: **Assessor's Parcel No. 159-151-03**
(7802 Garfield Ave., Huntington Beach, California)

Dear Mr. Leifer:

The staff of the City of Huntington Beach is proposing to recommend to the City Council the acquisition of 20 feet of right-of-way from the above Parcel for the widening of Garfield Avenue. The street will be widened to permit four travel lanes, a median, on-street parking, bicycle lanes and curb, gutter and sidewalk.

From a title search conducted by First American Title Company, Pete and Carmen O. Alvarez, who we understand to be your clients, are the owners of record of the property located at 7802 Garfield, identified by the County Assessor as Parcel No. 159-151-03. The property is within the street widening area; a legal description and plat map of the portion of the above Parcel under consideration for acquisition are attached to the enclosed Offer to Purchase.

While staff proposes to recommend the acquisition of the described property to the City Council of the City of Huntington Beach for this project, no decision to acquire can be made until the City Council formally acts to approve this acquisition. Nothing in this letter is meant to pre-commit the City Council or otherwise limit the options available to the City Council. Consequently the enclosed Offer, if accepted, and the acquisition of the described property are conditional upon and require the approval of the City Council.

Michael M. Leifer

Re: Assessor's Parcel No. 159-151-03

November 15, 2006

Page 2

It is our sincere desire that the described property can be acquired amicably, expeditiously, and by negotiation, with the approval of City Council. To this end, California *Government Code* §7267.2(a) provides that *prior to* initiating negotiations for the acquisition of real property that the City of Huntington Beach shall:

- Make an offer to the Owner of record to acquire the property for the full amount that the public entity has established as just compensation;
- Which offer is not less than the public entity's appraisal of the fair market value of the property; and
- Provide the Owner with a written statement of, and summary of the basis for, the amount the City of Huntington Beach established as just compensation.

As you will note from the enclosed Offer to Purchase and Valuation and Appraisal Summary Statement, the City of Huntington Beach is offering an amount that is greater than the amount that it believes would constitute just compensation if the entire 20 feet of property to be acquired is lawfully subject dedication. The City does this in an effort to acquire the property by negotiated agreement and to avoid litigation, and it should not be deemed an admission of value. As such, in the event the property cannot be acquired by negotiated agreement and the City should elect to proceed by way of an action in eminent domain, the City will assert that the entire 20 feet of property is lawfully subject to dedication.

Also enclosed herewith is a proposed Contract of Acquisition which your clients will be asked to sign if they accept the City's Offer.

After you have had an opportunity to review the City's offer with your clients, I will be contacting you to discuss the matter. Should you have any questions, or wish to discuss the matter before you hear from me, do not hesitate to call.

Very truly yours,



Neal Moore
Sr. Deputy City Attorney

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NM:cl

5801

Offer to Purchase
(APN 159-151-03)
(Govt. Code Sections 7267.1 and 7267(a))

The City of Huntington Beach is proposing to widen and upgrade Garfield Avenue. This project will necessitate acquiring an additional 20 feet of right-of way along the southern side of Garfield Avenue. Attached hereto as Exhibits A and B are the Legal Description and Plat for Right-of-Way Acquisition of the property (herein after called the "Parcel") that the City proposes acquiring for this project. A review of the Orange County Public Records reveals that title to said Parcel is vested in Pete and Carmen O. Alvarez.

The City of Huntington Beach proposes to acquire for the project all rights in the Parcel in fee simple interest.

The City of Huntington Beach anticipates that the construction of the public improvements along Garfield and within the Parcel may necessitate intermittent use of the property immediately adjacent and south of said Parcel. For this purpose, the City proposes acquiring a temporary construction easement of less than five (5) feet of property immediately adjacent and south of said Parcel for a period of three (3) months during construction.

The City of Huntington Beach offers to pay the sum of **\$54,600.00** for the acquisition of said Parcel, and improvements thereon, an amount that the City believes is greater than what would constitute just compensation under applicable legal authorities. This offer is made with the express notation that, if it is not accepted and the property cannot be acquired by negotiated agreement, and should the City elect to proceed by way of an action in eminent domain, this offer shall not be considered or deemed an admission of what constitutes just compensation under applicable legal authorities.

The City of Huntington Beach also offers to pay the sum of **\$820.05** for the above-described temporary construction easement, an amount that the City believes constitutes just compensation.

This offer is conditional upon the Huntington Beach City Council ratifying the offer by formal action taken at a regular public meeting authorizing the execution of a Contract of Acquisition or adopting a Resolution of Necessity, or both.

When property is sold to the City of Huntington Beach, there is the same obligation as in a private transaction for the Owner to pay in escrow the amounts needed to remove any existing liens and encumbrances. In the event that you decide to accept the offer, it is recommended that you contact directly the persons, if any, to whom you may be making payments under trust deeds or other liens, and reach an agreement with them as to the amount of money they will demand, if any, in escrow to clear the property being acquired of these liens and encumbrances. In the event that there are liens and encumbrances, the Owner shall either:

- (1) Pay to Owners of liens and encumbrances, out of the approved compensation paid by the City of Huntington Beach, the amount needed to terminate leases or cancel trust deeds, mortgages, or other liens affecting the property acquired, or
- (2) Arrange for holders of leases, trust deeds, mortgages, or other liens to quitclaim their interest, if any, to the Parcel being acquired.

Similarly, when an Owner sells his/her property to the City of Huntington Beach, the Owner's obligation to pay current and past due property taxes is the same as if the Owner were selling to a private individual.

However, you, as an Owner, will not be required to pay recording fees, transfer taxes, or the *pro rata* portion of real property taxes which are allocable to any period after the passage of title or possession to the City of Huntington Beach.

If you have any questions in regard to this offer, please contact Neal Moore at (714) 375-8452.

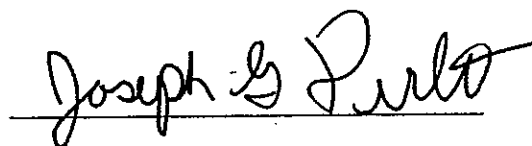
Exhibit A

Legal Description

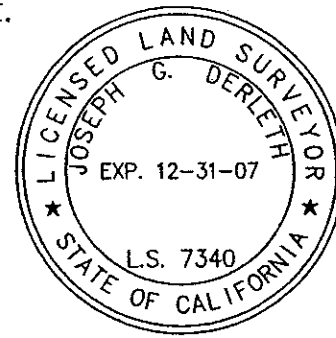
The Northerly 20.00 feet, of the North 170.00 feet, of the West 50.00 of the east one-half of Lot 2, of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Containing 1000.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-03

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

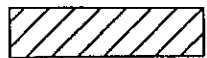
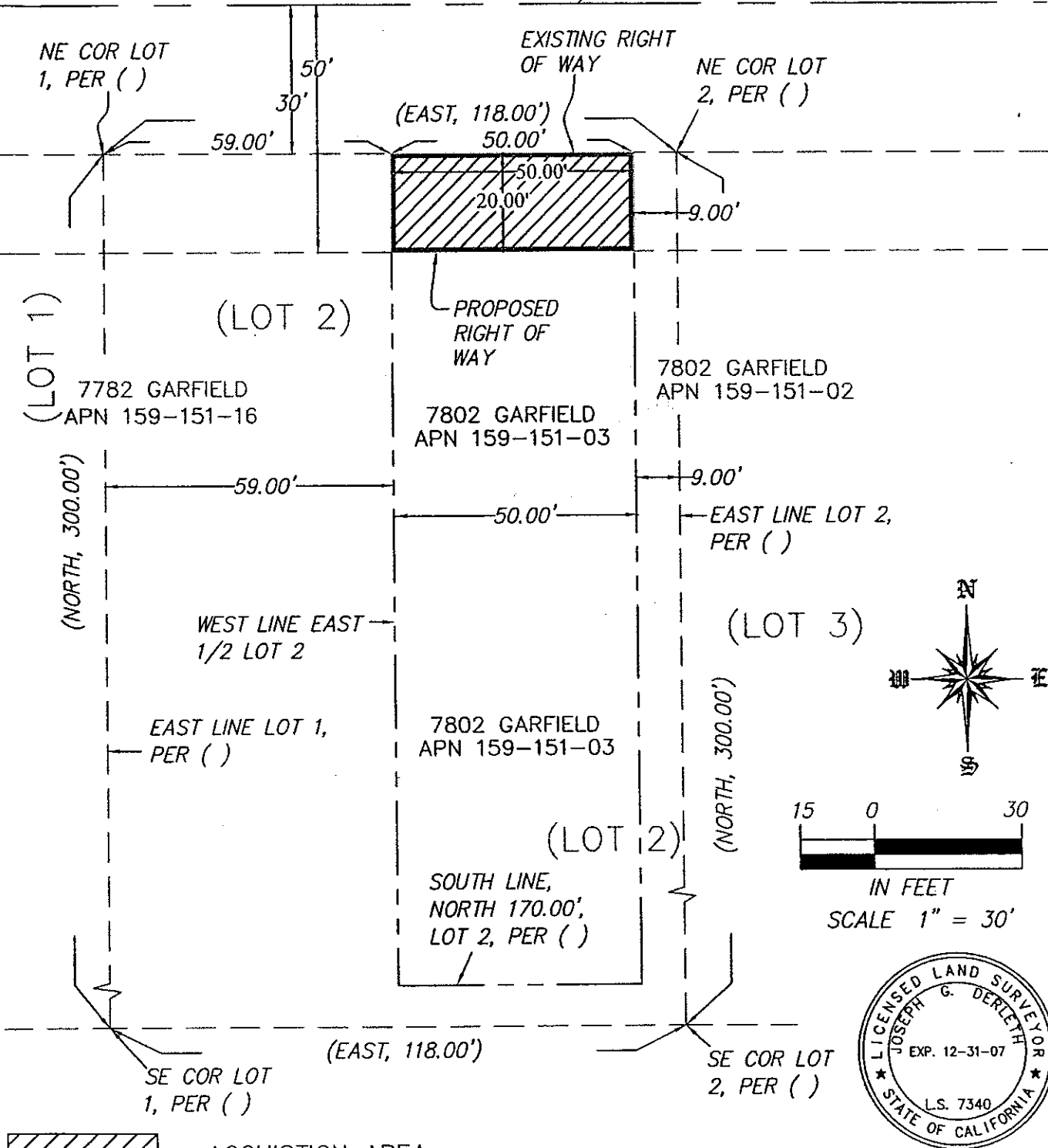
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Exhibit B

Garfield Avenue



= ACQUISITION AREA

()=RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

Plat for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-03

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

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**Summary Statement Accompanying Government Code § 7267.2(a)
Offer Relating to Acquisition Procedures for Purchase
of Real Property At 7802 Garfield Avenue, Huntington Beach,
California, APN: 159-151-03 (Pete and Carmen Alvarez)**


The California Relocation Assistance and Real Property Acquisition Guidelines provide that each Owner from whom the City of Huntington Beach purchases real property or an interest therein, or each tenant owning improvements on said property, be provided the following information which may or may not be applicable to your property and this proposed acquisition.

- 1) You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
- 2) The City of Huntington Beach will offer to purchase any remnant considered by the City of Huntington Beach to be an uneconomic unit which is owned by you or, if applicable, occupied by you as a tenant and which is contiguous to the land being conveyed.
- 3) All buildings, structures, and other improvements affixed to the land described in the referenced documents covering this transaction and owned by the grantors herein or, if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The interests to be acquired are a fee simple absolute and a temporary construction easement. The fee simple parcel being purchased comprises 1,000 square feet and is described in the attached legal description and outlined on the attached map. The temporary construction easement is a 50 feet by less than 5 feet strip immediately south of the Parcel.
- 4) The amount determined to be just compensation was determined after consideration of an appraisal of the fair market value of the Parcel. The basis for the amount determined to be just compensation is summarized on the attached Statement of the Amount Established as Just Compensation and Appraisal Summary Statement. Such amount:
 - a. Exceeds the full amount that the City of Huntington Beach believes to be just compensation;
 - b. Is no less than the full amount of the public entity's approved appraisal of fair market value for the property to be purchased;
 - c. Disregards any decrease or increase in the fair market value of the real property proposed to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or the likelihood that the property would be acquired for such public improvement, other than due to physical deterioration within the reasonable control of the Owner or occupant; and

- d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the Owner is entitled to receive under an agreement with the City of Huntington Beach.

If you ultimately elect to reject the offer of the City of Huntington Beach for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.

Dated: 11/13/06



Steve Holtz
Real Property Manager

**Valuation and Appraisal Summary Statement
For 7802 Garfield Avenue, Huntington Beach, California,
APN: 159-151-03 (Pete and Carmen Alvarez)
Government Code § 7267.2**

The following is a summary of the analysis and basis for the amount that the City of Huntington Beach believes to be just compensation, which amount was derived from an appraisal as approved by the City of Huntington Beach, in conjunction with consideration of applicable principles of law. A statement of the appraisal process and applicable principles of law, which forms the basis for the valuation conclusions and offer to purchase, is as follows.

Property Data

Date of Valuation Used: May 17, 2006

Project: Garfield Street Widening

APN: 159-151-03

Record Owner: Pete Alvarez and Carmen O. Alvarez, husband and wife, as joint tenants

Address/location: 7802 Garfield Avenue, Huntington Beach, California

Property to be acquired: Fee Simple and Temporary Construction Easement

The proposed acquisition is part of an entire ownership.

The area of the parcel proposed to be acquired is 20 feet adjacent to Garfield Avenue, comprising 1,000 sq. ft. The area of the entire lot is 8,500 square feet. The fee simple parcel being purchased is the northerly 20 feet adjacent to Garfield Avenue, comprising 1,000 square feet. The temporary construction easement is a 50 feet by less than 5 feet strip immediately south of the fee simple parcel.

Topography: Flat Shape: Rectangular

Access: Garfield

Environmental Conditions: The valuation is premised on the assumption that the property is free and clear of contamination

Highest and Best Use Analysis

Highest and best use is defined as the reasonably probable and legal use of land which is legally permissible, physically possible, and financially feasible that results in the highest value. Highest and best use analysis is used in the appraisal process to identify comparable properties

and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished. The results of the highest and best use analysis are:

Zoning: RM (Medium Density Residential)

Present Use: Vacant and unimproved

Highest and Best Legal Use of Property:

If subject to dedication: Unbuildable Open Space

If not subject to dedication: Medium Density Residential (Up to 2 units)

Valuation Analysis:

The sales comparison approach was used as the best indication of market value. The sales comparison approach is one of the three accepted approaches to value. The income capitalization approach and the cost approach were not considered to be applicable to this appraisal problem.

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison. This is the preferred method of valuation when comparable sales data are available. The sales comparison approach was based on the consideration of comparable sales which sold within a reasonable time of the date of valuation.

To determine the value of the property to be acquired based upon a highest and best use of Medium Density Residential, only unimproved properties with similar zoning which sold with a reasonable time of the date of valuation were considered. The parcels believed to be most similar in physical and locational characteristics ranged from 43,692 sq. ft. with a potential for 13 units, to 7,590 sq. ft. with a potential for two units. The prices, adjusted according to location and to account for market changes since the time of their sale, ranged from \$82.35 to \$87.84 per sq. ft. of land. Based upon its highest and best use, if not subject to dedication, as if vacant, as of May 17, 2006, the appraiser believes the property has a value of \$85 per square foot.

It also is expected that a temporary construction easement of less than five feet of width will be required during the three months of construction. The temporary easement is valued at 10% of the fair market value of the property for each year of use. Three months is only $\frac{1}{4}$ of a year; therefore, the value of the construction easement is $\$85/\text{sq. ft.} \times 10\% \times 25\% = \$2.13/\text{sq. ft.}$

Huntington Beach Zoning Code Section 230.84(A) requires that "[p]rior to issuance of a building permit ... all real property shall be dedicated ... which the City requires for streets. . . ." Section 230.84(B) exempts from said dedication requirement certain alterations or additions that "do not exceed a third of the value of a building...." Section 230.84(C) then specifies the dedication shall be according to the Department of Public Works "standard plans" or "a precise plan of street, highway or alley alignment." The plans that Public Works follows are the General Plan Circulation Element, specifically Figures CE-13 and CE-3. Figure CE-13 depicts Garfield as a four lane primary street with a median, requiring a right-of-way of 100 feet, and Figure CE-

3 takes into account growth through 2010, and requires a six lane divided street of 120 feet. The 20 foot deep parcel to be acquired is for a 100 feet wide street.

Under existing legal authorities, in order for said dedication to be lawful, it must have some reasonable connection or "nexus" to the particular development to be undertaken. In this instance, the 20 feet of property to be acquired, and which would be sought for dedication upon development, includes 12 feet for additional roadway and 8 feet for curb, gutter, and sidewalk.

To the extent that the 20 feet of property to be acquired would be subject lawful dedication, its value, for purposes of determining just compensation, is limited to its value in its current undeveloped state "because it [can] never be used for any other purpose." *City of Porterville v Young* (1987) 195 Cal.App.3d 1260, 1269 [See also *Contra Costa County Flood Control etc. v Lone Tree Investments* (1992) 7 Cal.App.4th 930, 933-6] Such property was valued by the City's appraiser as "open space" or "unbuildable" land. Sales of similar "unbuildable" lots were identified, and ranged from \$5.36 to \$8.93 pre sq. ft. of land. Based thereupon, the appraiser believes that said property, if "unbuildable" and valued as "open space," has a value of \$9 per square foot.

While the City of Huntington Beach believes that the entire 20 feet of property to be acquired would be subject to dedication at the time of its development, and thus should be valued at \$9 sq. ft. in its current undeveloped condition, it does recognize that this issue, at least for some portion of said property, may be subject to some uncertainty under applicable legal authorities. If all 20 feet of property would lawfully be subject to dedication, just compensation of all the property to be acquired would be \$9 sq. ft. If only the 8 feet for curb, gutter and sidewalk would lawfully be subject to dedication, just compensation for the remaining 12 feet would \$85/sq.ft. based upon a highest and best use of Medium Density Residential.

In recognition of said legal uncertainty, and in the interest of acquiring the property by negotiated agreement without the necessity of litigation, the City of Huntington Beach is offering to acquire said property for an amount that is greater than what it believes constitutes just compensation. Specifically, the City is offering to acquire said property as if only the 8 feet for curb, gutter and sidewalk were subject to lawful dedication. Based thereupon, the City's offer to purchase is calculated as follows:

Valuation Conclusions and Offer to Purchase:

Land taken:

For the 12 feet acquired for additional roadway (50 ft x 12 ft = 600 sq.ft. @ \$85/sq.ft = \$51,000)	\$51,000
---	----------

For the 8 feet acquired for curb, gutter & sidewalk (50 ft x 8 ft = 400 sq.ft. @ \$9/sq.ft. = \$3,600)	\$ 3,600
---	----------

Temporary Construction Easement:

(50 feet x 5 feet = 250 sq.ft. for 3 months @ \$2.13/sq.ft.	<u>\$ 532.50</u>
---	------------------

Total	\$55,132.50
-------	-------------

This offer is made without prejudice and with the express notation that, if the property cannot be acquired by negotiated agreement and should the City elect to proceed by way of an action in eminent domain, the City of Huntington Beach will assert, based upon its understanding and interpretation of applicable legal authorities, that the entire 20 feet of property to be acquired is subject to lawful dedication, and should thus be valued at \$9 a square foot.

Severance Damages:

In addition, in establishing the amount believed to be just compensation, the City of Huntington Beach derived from said appraisal whether or not there were damages and benefits to the remaining property. The basis for this determination is whether or not the remainder had been diminished in value by reason of the acquisition of the Parcel being acquired and the construction of the improvement in the manner proposed (severance damage and, if so, whether the same remainder had been increased in value by reason of the construction of the improvement in the manner proposed (benefits). If there are no severance damages, then whether there is a benefit is inapplicable since benefits can only be offset against severance damages by reason of California valuation law.

In this case, there are no severance damages, principally because the same intensity of development can be accommodated on the entire parcel regardless of whether it is reduced by the amount of the take or not.

Cal. Admin. Code, Title 25, Section 6182(f) Notification:

You are further advised that in addition to the information already provided in this Summary, California *Code of Regulations*, Title 25, Div. 1, §6182(f) provides that after receiving the public entity's offer, the Owner may request prior to the commencement of an eminent domain proceeding and the public entity shall provide:

- 1) The identification of some of the market transactions (e.g. sales, contracts to sell and purchase, leases to the extent that the determination of just compensation was based thereon) together with the names and addresses, if known, of the parties to the transaction, the location of the property subject to the transaction, the date of the transaction, and the price and other significant terms and circumstances of the transaction, if known; and

Said information will be provided upon written request of the Owner made prior to the commencement of any eminent domain proceeding

Contract of Acquisition
(APN 159-151-03)
Government Code §§7267.1 and 7267.2(a)
Acquisition of Property by Negotiation

Pete Alvarez and Carmen O. Alvarez (hereinafter referred to as Grantors) will conditionally deliver an executed Grant Deed conveying the property described and depicted in the attached Exhibits A & B (hereinafter referred to as the Parcel) to the City of Huntington Beach (hereinafter referred to as Grantee).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1.
 - A. Grantee requires the Parcel, a property not now appropriated to a public use, for the construction of a public improvement described as the widening and improvement of Garfield Avenue, a public use.
 - B. Because Grantee may exercise the power of eminent domain to acquire, Grantors are compelled to sell; and because Grantee requires the property for the described public use, Grantee is compelled to buy. As such, the acquisition of the Parcel is an involuntary conversion of the Parcel from private to public use.
 - C. Both Grantors and Grantee recognize the expense, time, effort, and risk to both Grantor and Grantee in resolving a dispute over compensation for the Parcel by eminent domain litigation; and the compensation set forth herein is in compromise and settlement, in lieu of such litigation.
 - D. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said Grant Deed and shall relieve Grantee of all further obligation or claims of whatever kind or nature on this account, or on account of the construction of the proposed public improvement in the manner proposed, including, but not limited to, claims arising out of its location, grade, or restriction of private access rights. Grantors acknowledge that Grantee has informed Grantors as to the plans for the construction of the proposed public improvement in the manner proposed.
2. Grantee shall:
 - A. Open an escrow and provide escrow instructions to the escrow holder to carry out the terms of this Agreement. Grantee shall pay all escrow and recording fees incurred in this transaction. Grantee shall deposit said conditionally delivered Grant Deed together with the sum provided in Paragraph 2.B. into the escrow. The escrow holder shall be authorized and Grantors shall be entitled to the disbursement of the sum deposited in said escrow less any amounts payable to any other person having an

interest in the Parcel when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. or when Grantee otherwise consents to title vesting Grantee. Grantors shall not be entitled to receive any of said net payment and the escrow holder shall not be authorized to disburse said proceeds until:

- 1) All holders of liens and encumbrances on the Parcel have received full payment for all principal and interest due to them or have consented to payment to the Grantors and have executed reconveyance of their interest in the Parcel;
- 2) All other parties having interest in have received payment therefore or have consented to a payment to Grantors; and
- 3) The City of Huntington Beach has acknowledged in writing that it concurs that all other parties having interest in the Parcel have received full payment or have consented to disbursement to Grantor.

The escrow holder shall be authorized to deliver unconditionally said Grant Deed to Grantee either when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. herein or when Grantee otherwise consents to title vesting Grantee.

The escrow shall remain open until either a) all of the conditions of said escrow have been met, or b) in the event that a dispute arises during the course of the escrow, then until either a settlement has been reached or this agreement is terminated or a final order of condemnation under §1268.030 of the California *Code of Civil Procedure* is entered by the Court. Any sum disbursed to Grantors from this escrow shall be deducted from the ultimate amount received by Grantor as a result of any settlement, award, or verdict of just compensation for the Parcel

- B. Pay the undersigned Grantors the sum of \$55,132.50 for the property or interest conveyed by said Grant Deed when title to said property vests in the City of Huntington Beach free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except:

- 1) Taxes for the tax year in which the escrow closes shall be cleared and paid in the manner required by §5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.

2) Covenants, conditions, restrictions and reservations of record, or contained in said Grant Deed.

3) Easements or rights of way over said land for public or quasi-public street purposes, if any.

C. Pay all escrow and recording fees incurred in this transaction, and, if title insurance is desired by Grantee, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax.

D. Have the authority to instruct the escrow holder to deduct and pay from the amount shown in Paragraph 2.B. above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.

E. Shall have the irrevocable right to take possession of the Parcel five (5) days after the deposit of the sum provided in Paragraph 2.B. into escrow.

3. While Grantors and Grantee anticipate that escrow will close as provided herein, in the event that a dispute arises during the course of said escrow between Grantors, Grantee and/or the escrow holder, or between Grantors and any third-party claimant to any or all of the proceeds of said escrow, and it becomes necessary for Grantee to file a condemnation action then:

A. Grantee shall remain in possession and the compensation provided for in this agreement shall draw interest as prescribed at the apportionment rate calculated by the Controller as the rate of earning by the Surplus Money Investment Fund for each six-month period. Grantors shall be entitled to receive interest on the sum received as compensation pursuant to this agreement for Grantors' interest in the Parcel beginning at the date of possession provided for in Paragraph 2.E. herein.

B. Grantors waive all claims and defenses challenging Grantee's right to acquire the Parcel by eminent domain in the event that Grantee files any subsequent eminent domain proceeding, and agrees that the City of Huntington Beach has the right to acquire the Parcel by eminent domain and that the public interest and necessity require the project; the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; the Property is necessary for the project; and an offer in an amount no less than the full amount of the City of Huntington Beach's approved appraisal was made to Grantors. Grantors agree that the total amount of compensation that shall be

awarded is the sum provided in Paragraph 2 plus interest as provided in Paragraph 3.A. herein.

IN WITNESS WHEREOF, the Parties have executed this agreement on _____ at _____, State of California.

Grantor _____
Pete Alvarez

Grantor _____
Carmen O. Alvarez

Grantee, City of Huntington Beach

By: _____
Its duly authorized representative

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U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here 11-15-06	
Michael M. Leifer	
Sent To	Palmieri Tyler Wiener Wilhelm & Waldron, LLP
Street, Apt. No., or PO Box No.	2603 Main St, East Tower, Ste 1300
City, State, ZIP+4	Irvine, CA 92614-6228
PS Form 3800, June 2002 See Reverse for Instructions	

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael M. Leifer
Palmieri Tyler Wiener Wilhelm & Waldron, LLP
2603 Main St, East Tower, Ste 1300
Irvine, CA 92614-6228

2. Article Number

(Transfer from service label)

7002 2410 0002 2299 4860

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☐ Agent
☐ Address

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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ATTACHMENT 5

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Jennifer McGrath
City Attorney

OFFICE OF
CITY ATTORNEY

P.O. Box 190
2000 Main Street
Huntington Beach, California 92648
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr., Deputy City Attorney
John Fujii, Deputy City Attorney
Teresa Judd, Deputy City Attorney
Leonie Mulvihill, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Mike Vigliotta, Deputy City Attorney

November 15, 2006

Esther Contreras
19535 Oak Tree Lane
Riverside, CA 92580-9594

Re: **Assessor's Parcel No. 159-151-16**
(7782 Garfield Ave., Huntington Beach, California)

Dear Ms Contreras:

The staff of the City of Huntington Beach is proposing to recommend to the City Council the acquisition of 20 feet of right-of-way from the above Parcel for the widening of Garfield Avenue. The street will be widened to permit four travel lanes, a median, on-street parking, bicycle lanes and curb, gutter and sidewalk.

From a title search conducted by First American Title Company, we have been advised that you have an ownership interest in the property located at 7782 Garfield, identified by the County Assessor as Parcel No. 159-151-016. The property is within the street widening area; a legal description and plat map of the portion of the above Parcel under consideration for acquisition are attached to the enclosed Offer to Purchase

While Staff proposes to recommend the acquisition of the described property to the City Council of the City of Huntington Beach for this project, no decision to acquire can be made until the City Council formally acts to approve this acquisition. Nothing in this letter is meant to pre-commit the City Council or otherwise limit the options available to the City Council. Consequently the enclosed Offer, if accepted, and the acquisition of the described property are conditional upon and require the approval of the City Council.

It is our sincere desire that the described property can be acquired amicably, expeditiously, and by negotiation, with the approval of City Council. To this end, California *Government Code* §7267.2(a) provides that *prior to* initiating negotiations for the acquisition of real property that the City of Huntington Beach shall:

- Make an offer to the Owner of record to acquire the property for the full amount that the public entity has established as just compensation;

Re: Assessor's Parcel No. 159-151-16

November 15, 2006

Page 2

- Which offer is not less than the public entity's appraisal of the fair market value of the property; and
- Provide the Owner with a written statement of, and summary of the basis for, the amount the City of Huntington Beach established as just compensation.

As you will note from the enclosed Offer to Purchase and Valuation and Appraisal Summary Statement, the City of Huntington Beach is offering an amount that is greater than the amount that it believes would constitute just compensation if the entire 20 feet of property to be acquired is lawfully subject dedication. The City does this in an effort to acquire the property by negotiated agreement and to avoid litigation, and it should not be deemed an admission of value. As such, in the event the property cannot be acquired by negotiated agreement and the City should elect to proceed by way of an action in eminent domain, the City will assert that the entire 20 feet of property was lawfully subject to dedication.

Also enclosed herewith is a proposed Contract of Acquisition which you and the other owners will be asked to sign if the City's Offer is accepted.

I would appreciate it if you would give me a call acknowledging your receipt of this letter and enclosures at your earliest convenience. I would also appreciate it if you would let me know if someone is going to be handling this matter on your behalf, so that I may then deal directly with that person. If not, I would like to speak with you regarding how long you will need to consider and come to some decision regarding the City's offer. My direct number is (714) 375-8452.

Thank you.

Very truly yours,



Neal Moore
Sr. Deputy City Attorney

NM:cl

cc: Daniel Gilbert Contreras
Andrea Contreras
Raul Contreras
Delores Contreras Austin
Thomas Contreras
Virginia Contreras
Michael Contreras

D3 . 88



Jennifer McGrath
City Attorney

**OFFICE OF
CITY ATTORNEY**

**P.O. Box 190
2000 Main Street
Huntington Beach, California 92648**
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr. Deputy City Attorney
John Fujii, Deputy City Attorney
Teresa Judd, Deputy City Attorney
Leonie Mulvihill, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Mike Vigliotta, Deputy City Attorney

November 15, 2006

Raul Contreras ✓
Delores Contreras Austin
Thomas Contreras
Virginia Contreras
Michael Contreras
P.O. Box 16425
Irvine, CA 92623

Re: **Assessor's Parcel No. 159-151-16**
(7782 Garfield Ave., Huntington Beach, California)

Dear Gentlepersons:

The staff of the City of Huntington Beach is proposing to recommend to the City Council the acquisition of 20 feet of right-of-way from the above Parcel for the widening of Garfield Avenue. The street will be widened to permit four travel lanes, a median, on-street parking, bicycle lanes and curb, gutter and sidewalk.

From a title search conducted by First American, we have learned that you have an ownership interest in the property located at 7782 Garfield, identified by the County Assessor as Parcel No. 159-151-016. The property is within the street widening area; a legal description and plat map of the portion of the above Parcel under consideration for acquisition are attached to the enclosed Offer to Purchase.

While staff proposes to recommend the acquisition of the described property to the City Council of the City of Huntington Beach for this project, no decision to acquire can be made until the City Council formally acts to approve this acquisition. Nothing in this letter is meant to pre-commit the City Council or otherwise limit the options available to the City Council. Consequently the enclosed Offer, if accepted, and the acquisition of the described property are conditional upon and require the approval of the City Council.

It is our sincere desire that the described property can be acquired amicably, expeditiously, and by negotiation, with the approval of City Council. To this end, California *Government Code* §7267.2(a) provides that *prior to* initiating negotiations for the acquisition of real property that the City of Huntington Beach shall:

Re: Assessor's Parcel No. 159-151-16
November 15, 2006
Page 2

- Make an offer to the Owner of record to acquire the property for the full amount that the public entity has established as just compensation;
- Which offer is not less than the public entity's appraisal of the fair market value of the property; and
- Provide the Owner with a written statement of, and summary of the basis for, the amount the City of Huntington Beach established as just compensation.

As you will note from the enclosed Offer to Purchase and Valuation and Appraisal Summary Statement, the City of Huntington Beach is offering an amount that is greater than the amount that it believes would constitute just compensation if the entire 20 feet of property to be acquired is lawfully subject dedication. The City does this in an effort to acquire the property by negotiated agreement and to avoid litigation, and it should not be deemed an admission of value. As such, in the event the property cannot be acquired by negotiated agreement and the City should elect to proceed by way of an action in eminent domain, the City will assert that the entire 20 feet of property was lawfully subject to dedication.

Also enclosed herewith is a proposed Contract of Acquisition which you and the other owners will be asked to sign if the City's Offer is accepted.

Upon receipt of this letter and enclosures, I would appreciate it if one of you would give me a call acknowledging your receipt. I would also appreciate it if you would let me know who will be handling this matter on your behalf, and on behalf of all the owners, so that I may then deal directly with that person. My direct number is (714) 375-8452.

Thank you.

Very truly yours,



Neal Moore
Sr. Deputy City Attorney

NM:cl

cc: Esther Contreras
Daniel Gilbert Contreras
Andrea Contreras

D3 . 90



Jennifer McGrath
City Attorney

OFFICE OF
CITY ATTORNEY

P.O. Box 190
2000 Main Street
Huntington Beach, California 92648
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr., Deputy City Attorney
John Fujii, Deputy City Attorney
Teresa Judd, Deputy City Attorney
Leonie Mulvihill, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Mike Vigliotta, Deputy City Attorney

November 15, 2006

Daniel Gilbert Contreras
Andrea Contreras
24320 Adams Ave.
Murrieta, CA 92562

Re: **Assessor's Parcel No. 159-151-16**
(7782 Garfield Ave., Huntington Beach, California)

Dear Mr. Contreras:

The staff of the City of Huntington Beach is proposing to recommend to the City Council the acquisition of 20 feet of right-of-way from the above Parcel for the widening of Garfield Avenue. The street will be widened to permit four travel lanes, a median, on-street parking, bicycle lanes and curb, gutter and sidewalk.

From a title search conducted by First American Title Company, we have been advised that you have an ownership interest in the property located at 7782 Garfield, identified by the County Assessor as Parcel No. 159-151-016. The property is within the street widening area; a legal description and plat map of the portion of the above Parcel under consideration for acquisition are attached to the enclosed Offer to Purchase.

While staff proposes to recommend the acquisition of the described property to the City Council of the City of Huntington Beach for this project, no decision to acquire can be made until the City Council formally acts to approve this acquisition. Nothing in this letter is meant to pre-commit the City Council or otherwise limit the options available to the City Council. Consequently the enclosed Offer, if accepted, and the acquisition of the described property are conditional upon and require the approval of the City Council.

It is our sincere desire that the described property can be acquired amicably, expeditiously, and by negotiation, with the approval of City Council. To this end, California *Government Code* §7267.2(a) provides that *prior to* initiating negotiations for the acquisition of real property that the City of Huntington Beach shall:

- Make an offer to the Owner of record to acquire the property for the full amount that the public entity has established as just compensation;

Re: Assessor's Parcel No. 159-151-16

November 15, 2006

Page 2

- Which offer is not less than the public entity's appraisal of the fair market value of the property; and
- Provide the Owner with a written statement of, and summary of the basis for, the amount the City of Huntington Beach established as just compensation.

As you will note from the enclosed Offer to Purchase and Valuation and Appraisal Summary Statement, the City of Huntington Beach is offering an amount that is greater than the amount that it believes would constitute just compensation if the entire 20 feet of property to be acquired is lawfully subject dedication. The City does this in an effort to acquire the property by negotiated agreement and to avoid litigation, and it should not be deemed an admission of value. As such, in the event the property cannot be acquired by negotiated agreement and the City should elect to proceed by way of an action in eminent domain, the City will assert that the entire 20 feet of property was lawfully subject to dedication.

Also enclosed herewith is a proposed Contract of Acquisition which you and the other owners will be asked to sign if the City's Offer is accepted.

Upon receipt of this letter and enclosures, I would appreciate it if you would give me a call and let me know who will be handling this matter on your behalf, and on behalf of all the owners, so that I may then deal directly with that person. My direct number is (714) 375-8452.

Thank you.

Very truly yours,



Neal Moore
Sr. Deputy City Attorney

NM:cl

cc: Esther Contreras
Raul Contreras
Delores Contreras Austin
Thomas Contreras
Virginia Contreras
Michael Contreras

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Offer to Purchase
(APN 159-151-16)
(Govt. Code Sections 7267.1 and 7267(a))

The City of Huntington Beach is proposing to widen and upgrade Garfield Avenue. This project will necessitate acquiring an additional 20 feet of right-of way along the southern side of Garfield Avenue. Attached hereto as Exhibits A and B are the Legal Description and Plat for Right-of-Way Acquisition of the property (herein after called the "Parcel") that the City proposes acquiring for this project. A review of the Orange County Public Records reveals that title to said Parcel is vested as follows: Raul Contreras, Dolores Contreras Austin, Thomas Contreras, Virginia Contreras, Michael Contreras, all as tenants in common, the 1/3 interest; Daniel Gilbert Contreras and Andrea Contreras in joint tenancy as, Co-Trustees of "The Contreras Living Trust", dated September 7, 1999, as to an undivided 1/3 interest; Esther Contreras, Trustee of The Contreras Trust dated April 15, 1998, as to an undivided 1/3 interest, all as their respective interests appear of record.

The City of Huntington Beach proposes to acquire for the project all rights in the Parcel in fee simple interest.

The City of Huntington Beach anticipates that the construction of the public improvements along Garfield and within the Parcel may necessitate intermittent use of the property immediately adjacent and south of said Parcel. For this purpose, the City proposes acquiring a temporary construction easement of less than five (5) feet of property immediately adjacent and south of said Parcel for a period of three (3) months during construction.

The City of Huntington Beach offers to pay the sum of **\$84,084.00** for the acquisition of said Parcel, and improvements thereon, an amount that the City believes is greater than what would constitute just compensation under applicable legal authorities. This offer is made with the express notation that, if it is not accepted and the property cannot be acquired by negotiated agreement, and should the City elect to proceed by way of an action in eminent domain, this offer shall not be considered or deemed an admission of what constitutes just compensation under applicable legal authorities.

The City of Huntington Beach also offers to pay the sum of **\$820.05** for the above-described temporary construction easement, an amount that the City believes constitutes just compensation.

This offer is conditional upon the Huntington Beach City Council ratifying the offer by formal action taken at a regular public meeting authorizing the execution of a Contract of Acquisition or adopting a Resolution of Necessity, or both.

When property is sold to the City of Huntington Beach, there is the same obligation as in a private transaction for the Owner to pay in escrow the amounts needed to remove any existing liens and encumbrances. In the event that you decide to accept the offer, it is recommended that you contact directly the persons, if any, to whom you may be making payments under trust deeds or other liens, and reach an agreement with them as to the amount of money they will demand, if

any, in escrow to clear the property being acquired of these liens and encumbrances. In the event that there are liens and encumbrances, the Owner shall either:

- (1) Pay to Owners of liens and encumbrances, out of the approved compensation paid by the City of Huntington Beach, the amount needed to terminate leases or cancel trust deeds, mortgages, or other liens affecting the property acquired, or
- (2) Arrange for holders of leases, trust deeds, mortgages, or other liens to quitclaim their interest, if any, to the Parcel being acquired.

Similarly, when an Owner sells his/her property to the City of Huntington Beach, the Owner's obligation to pay current and past due property taxes is the same as if the Owner were selling to a private individual.

However, you, as an Owner, will not be required to pay recording fees, transfer taxes, or the *pro rata* portion of real property taxes which are allocable to any period after the passage of title or possession to the City of Huntington Beach.

If you have any questions in regard to this offer, please contact Neal Moore at (714) 375-8452.

Exhibit A

Legal Description

The Northerly 20.00 feet of the North half of Lot 1 and the Northerly 20.00 feet of the West 59.00 feet of Lot 2, both of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom the West 88.50 feet, and the West 11.50 of East 29.50 feet of said North half of said Lot 1.

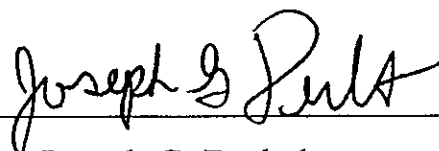
Also excepting therefrom the South 150.00 feet, of said 59.00 feet of said Lot 2.

Also excepting therefrom all right, title and interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, with the right to enter in and upon the premises at any time, drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed from A.M. Elliott and Vera L. Elliott to Daniel Contreras and Ruperta Contreras, husband and wife, for an undivided one-half interest in said land recorded June 26, 1944, in Book 1259, page 258 of Official Records of Orange County, California and as reserved in the deed from Katherine Hendrickson McDonald, formerly Katherine Hendrickson, to Pete Alvarez and Carmen O. Alvarez, husband and wife, for an undivided one-half interest in said land, recorded February 27, 1958 in Book 4210, page 222 of Official Records of said Orange County.

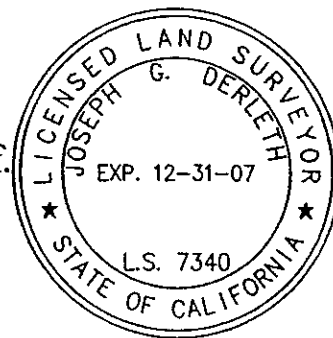
Containing 1540.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.

DRAFT



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7782 Garfield Avenue : APN 159-151-16

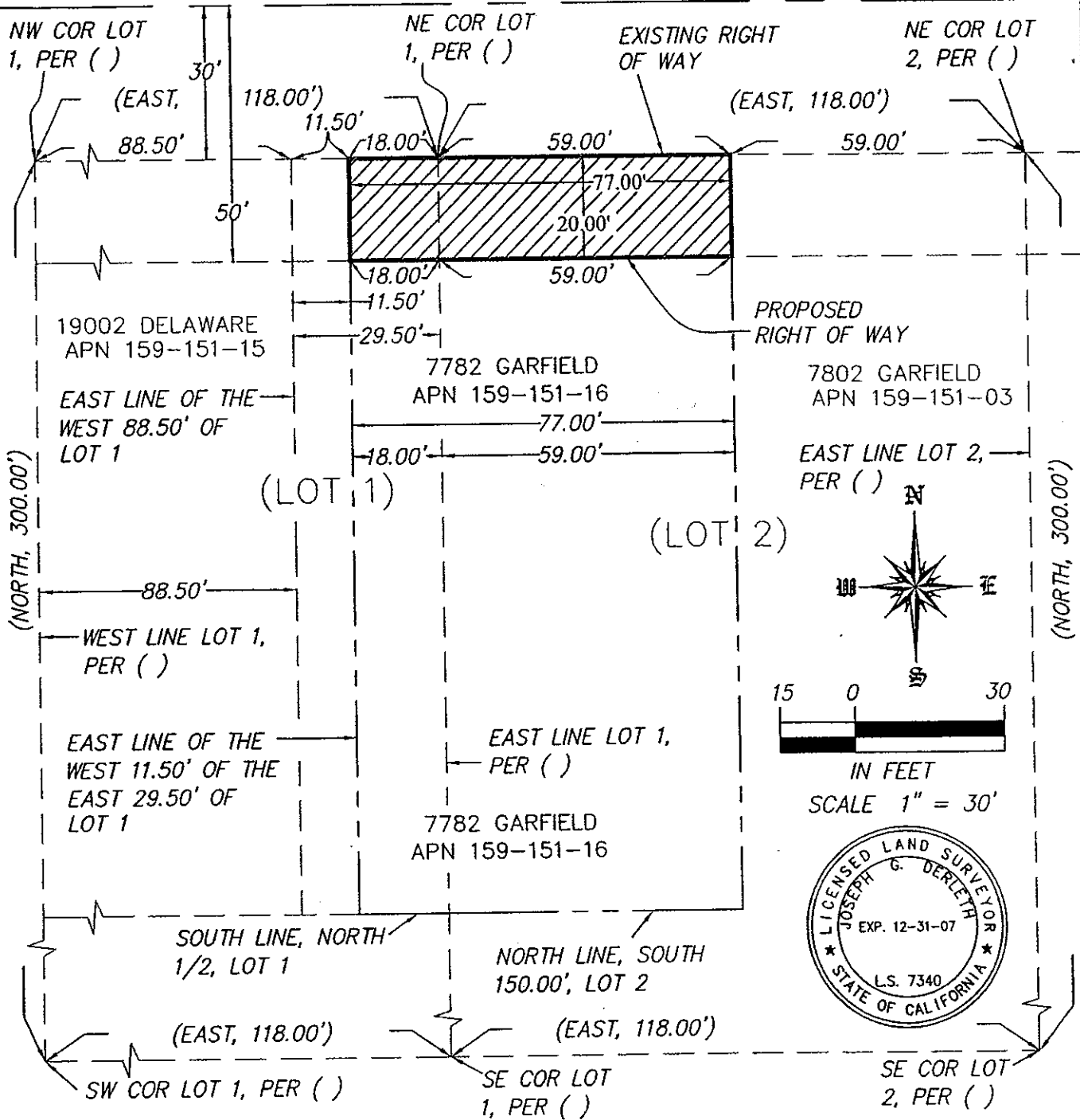
CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



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Exhibit B

GA FIELD AVENUE



= ACQUISITION AREA

() = RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

Plat for Right-of-Way Acquisition
7782 Garfield Avenue : APN 159-151-16

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



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Summary Statement Accompanying Government Code § 7267.2(a)
Offer Relating to Acquisition Procedures for Purchase
of Real Property At 7782 Garfield Avenue, Huntington Beach,
California, APN: 159-151-16 (Contreras)

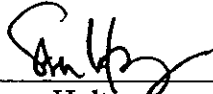
The California Relocation Assistance and Real Property Acquisition Guidelines provide that each Owner from whom the City of Huntington Beach purchases real property or an interest therein, or each tenant owning improvements on said property, be provided the following information which may or may not be applicable to your property and this proposed acquisition.

- 1) You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
- 2) The City of Huntington Beach will offer to purchase any remnant considered by the City of Huntington Beach to be an uneconomic unit which is owned by you or, if applicable, occupied by you as a tenant and which is contiguous to the land being conveyed.
- 3) All buildings, structures, and other improvements affixed to the land described in the referenced documents covering this transaction and owned by the grantors herein or, if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The interests to be acquired are a fee simple absolute and a temporary construction easement. The fee simple parcel being purchased comprises 1,540 square feet and is described in the attached legal description and outlined on the attached map. The temporary construction easement is a 77 feet by less than 5 feet strip immediately south of the Parcel.
- 4) The amount determined to be just compensation was determined after consideration of an appraisal of the fair market value of the Parcel. The basis for the amount determined to be just compensation is summarized on the attached Statement of the Amount Established as Just Compensation and Appraisal Summary Statement. Such amount:
 - a. Exceeds the full amount that the City of Huntington Beach believes to be just compensation;
 - b. Is no less than the full amount of the public entity's approved appraisal of fair market value for the property to be purchased;
 - c. Disregards any decrease or increase in the fair market value of the real property proposed to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or the likelihood that the property would be acquired for such public improvement, other than due to physical deterioration within the reasonable control of the Owner or occupant; and

- d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the Owner is entitled to receive under an agreement with the City of Huntington Beach.

If you ultimately elect to reject the offer of the City of Huntington Beach for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.

Dated: 11/13/06



Steve Holtz
Real Property Manager

Valuation and Appraisal Summary Statement
For 7782 Garfield Avenue, Huntington Beach, California,
APN: 159-151-16 (Contreras)
Government Code § 7267.2

The following is a summary of the analysis and basis for the amount that the City of Huntington Beach believes to be just compensation, which amount was derived from an appraisal as approved by the City of Huntington Beach, in conjunction with consideration of applicable principles of law. A statement of the appraisal process and applicable principles of law, which forms the basis for the valuation conclusions and offer to purchase, is as follows.

Property Data

Date of Valuation Used: May 17, 2006

Project: Garfield Street Widening

APN: 159-151-16

Record Owner: Raul Contreras, Dolores Contreras Austin, Thomas Contreras, Virginia Contreras, Michael Contreras, all as tenants in common, the 1/3 interest; Daniel Gilbert Contreras and Andrea Contreras in joint tenancy as, Co-Trustees of "The Contreras Living Trust", dated September 7, 1999, as to an undivided 1/3 interest; Esther Contreras, Trustee of The Contreras Trust dated April 15, 1998, as to an undivided 1/3 interest, all as their respective interests appear of record

Address/location: 7782 Garfield Avenue, Huntington Beach, California

Property to be acquired: Fee Simple and Temporary Construction Easement

The proposed acquisition is part of an entire ownership.

The area of the entire lot is 11,550 square feet. The fee simple parcel being purchased is the northerly 20 feet adjacent to Garfield Avenue, comprising 1,000 square feet. The temporary construction easement is a 77 feet by less than 5 feet strip immediately south of the fee simple parcel.

Topography: Flat Shape: Rectangular

Access: Garfield

Environmental Conditions: The valuation is premised on the assumption that the property is free and clear of contamination

Highest and Best Use Analysis

Highest and best use is defined as the reasonably probable and legal use of land which is legally permissible, physically possible, and financially feasible that results in the highest value.

Highest and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished. The results of the highest and best use analysis are:

Zoning: RM (Medium Density Residential)

Present Use: Vacant and unimproved

Highest and Best Use of Property:

If subject to dedication: Unbuildable Open Space

If not subject to dedication: Medium Density Residential (Up to 3 units)

Valuation Analysis:

The sales comparison approach was used as the best indication of market value. The sales comparison approach is one of the three accepted approaches to value. The income capitalization approach and the cost approach were not considered to be applicable to this appraisal problem.

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison. This is the preferred method of valuation when comparable sales data are available. The sales comparison approach was based on the consideration of comparable sales which sold within a reasonable time of the date of valuation.

To determine the value of the property to be acquired based upon a highest and best use of Medium Density Residential, only unimproved properties with similar zoning which sold within a reasonable time of the date of valuation were considered. The parcels believed to be most similar in physical and locational characteristics ranged from 43,692 sq. ft. with a potential for 13 units, to 7,590 sq. ft. with a potential for two units. The prices, adjusted according to location and to account for market changes since the time of their sale, ranged from \$82.35 to \$87.84 per sq. ft. of land. Based upon its highest and best use, if not subject to dedication, as if vacant, as of May 17, 2006, the appraiser believes the property has a value of \$85 per square foot.

It also is expected that a temporary construction easement of less than five feet of width will be required during the three months of construction. The temporary easement is valued at 10% of the fair market value of the property for each year of use. Three months is only $\frac{1}{4}$ of a year; therefore, the value of the construction easement is $\$85/\text{sq. ft.} \times 10\% \times 25\% = \$2.13/\text{sq. ft.}$

Huntington Beach Zoning Code Section 230.84(A) requires that "[p]rior to issuance of a building permit ... all real property shall be dedicated ... which the City requires for streets. ...". Section 230.84(B) exempts from said dedication requirement certain alterations or additions that "do not exceed a third of the value of a building...." Section 230.84(C) then specifies the dedication shall be according to the Department of Public Works "standard plans" or "a precise plan of street, highway or alley alignment." The plans that Public Works follows are the General Plan Circulation Element, specifically Figures CE-13 and CE-3. Figure CE-13 depicts Garfield as a four lane primary street with a median, requiring a right-of-way of 100 feet, and Figure CE-3 takes into account growth through 2010, and requires a six lane divided street of 120 feet. The 20 foot deep parcel to be acquired is for a 100 foot wide street.

Under existing legal authorities, in order for said dedication to be lawful, it must have some reasonable connection or "nexus" to the particular development to be undertaken. In this instance, the 20 feet of property to be acquired, and which would be sought for dedication upon development, includes 12 feet for additional roadway and 8 feet for curb, gutter, and sidewalk.

To the extent that the 20 feet of property to be acquired would be subject lawful dedication, its value, for purposes of determining just compensation, is limited to its value in its current undeveloped state "because it [can] never be used for any other purpose." *City of Porterville v Young* (1987) 195 Cal.App.3d 1260, 1269 [See also *Contra Costa County Flood Control etc. v Lone Tree Investments* (1992) 7 Cal.App.4th 930, 933-6] Such property was valued by the City's appraiser as "open space" or "unbuildable" land. Sales of similar "unbuildable" lots were identified, and ranged from \$5.36 to \$8.93 per sq. ft. of land. Based thereupon, the appraiser believes that said property, if "unbuildable" and valued as "open space," has a value of \$9 per square foot.

While the City of Huntington Beach believes that the entire 20 feet of property to be acquired would be subject to dedication at the time of its development, and thus should be valued at \$9 sq. ft. in its current undeveloped condition, it does recognize that this issue, at least for some portion of said property, may be subject to some uncertainty under applicable legal authorities. If all 20 feet of property would lawfully be subject to dedication, just compensation of all the property to be acquired would be \$9 sq. ft. If only the 8 feet for curb, gutter and sidewalk would lawfully be subject to dedication, just compensation for the remaining 12 feet would be \$85/sq.ft. based upon a highest and best use of Medium Density Residential.

In recognition of said legal uncertainty, and in the interest of acquiring the property by negotiated agreement without the necessity of litigation, the City of Huntington Beach is offering to acquire said property for an amount that is greater than what it believes constitutes just compensation. Specifically, the City is offering to acquire said property as if only the 8 feet for curb, gutter and sidewalk were subject to lawful dedication. Based thereupon, the City's offer to purchase is calculated as follows:

Valuation Conclusions and Offer to Purchase:

Land taken:

For the 12 feet acquired for additional roadway
(77 ft x 12 ft = 924 sq.ft. @ \$85/sq.ft. = \$78,540) \$78,540

For the 8 feet acquired for curb, gutter & sidewalk
(77 ft x 8 ft = 616 sq.ft. @ \$9/sq.ft. = \$5,544) \$ 5,544

Temporary Construction Easement:

(77 feet x 5 feet = 385 sq.ft. for 3 months @ \$2.13/sq.ft.) \$ 820.05

Total \$84,904.05

This offer is made without prejudice and with the express notation that, if the property cannot be acquired by negotiated agreement and should the City elect to proceed by way of an action in eminent domain, the City of Huntington Beach will assert, based upon its understanding and interpretation of applicable legal authorities, that the entire 20 feet of property to be acquired is subject to lawful dedication, and should thus be valued at \$9 a square foot.

Severance Damages:

In addition, in establishing the amount believed to be just compensation, the City of Huntington Beach derived from said appraisal whether or not there were damages and benefits to the remaining property. The basis for this determination is whether or not the remainder had been diminished in value by reason of the acquisition of the Parcel being acquired and the construction of the improvement in the manner proposed (severance damage and, if so, whether the same remainder had been increased in value by reason of the construction of the improvement in the manner proposed (benefits). If there are no severance damages, then whether there is a benefit is inapplicable since benefits can only be offset against severance damages by reason of California valuation law.

In this case, there are no severance damages, principally because the same intensity of development can be accommodated on the entire parcel regardless of whether it is reduced by the amount of the take or not.

Cal. Admin. Code, Title 25, Section 6182(f) Notification:

You are further advised that in addition to the information already provided in this Summary, California *Code of Regulations*, Title 25, Div. 1, §6182(f) provides that after receiving the public entity's offer, the Owner may request and the public entity shall provide:

- 1) The identification of some of the market transactions (e.g. sales, contracts to sell and purchase, leases to the extent that the determination of just compensation was based thereon) together with the names and addresses, if known, of the parties to the transaction, the location of the property subject to the transaction, the date of the transaction, and the price and other significant terms and circumstances of the transaction.

Said information will be provided upon written request of the Owner made prior to the commencement of any eminent domain proceeding.

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Contract of Acquisition
(APN 159-151-16)
Government Code §§7267.1 and 7267.2(a)
Acquisition of Property by Negotiation

Raul Contreras, Dolores Contreras Austin, Thomas Contreras, Virginia Contreras, Michael Contreras, all as tenants in common, the 1/3 interest; Daniel Gilbert Contreras and Andrea Contreras in joint tenancy as, Co-Trustees of "The Contreras Living Trust", dated September 7, 1999, as to an undivided 1/3 interest; Esther Contreras, Trustee of The Contreras Trust dated April 15, 1998, as to an undivided 1/3 interest, all as their respective interests appear of record, (hereinafter referred to as Grantors) will conditionally deliver an executed Grant Deed conveying the property described and depicted in the attached Exhibits A & B (hereinafter referred to as the Parcel) to the City of Huntington Beach (hereinafter referred to as Grantee).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1.
 - A. Grantee requires the Parcel, a property not now appropriated to a public use, for the construction of a public improvement described as the widening and improvement of Garfield Avenue, a public use.
 - B. Because Grantee may exercise the power of eminent domain to acquire, Grantor is compelled to sell; and because Grantee requires the property for the described public use, Grantee is compelled to buy. As such, the acquisition of the Parcel is an involuntary conversion of the Parcel from private to public use.
 - C. Both Grantor and Grantee recognize the expense, time, effort, and risk to both Grantor and Grantee in resolving a dispute over compensation for the Parcel by eminent domain litigation; and the compensation set forth herein is in compromise and settlement, in lieu of such litigation.
 - D. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said Grant Deed and shall relieve Grantee of all further obligation or claims of whatever kind or nature on this account, or on account of the construction of the proposed public improvement in the manner proposed, including, but not limited to, claims arising out of its location, grade, or restriction of private access rights. Grantor acknowledges that Grantee has informed Grantor as to the plans for the construction of the proposed public improvement in the manner proposed.
2. Grantee shall:
 - A. Open an escrow and provide escrow instructions to the escrow holder to carry out the terms of this Agreement. Grantee shall pay all escrow and

recording fees incurred in this transaction. Grantee shall deposit said conditionally delivered Grant Deed together with the sum provided in Paragraph 2.B. into the escrow. The escrow holder shall be authorized and Grantor shall be entitled to the disbursement of the sum deposited in said escrow less any amounts payable to any other person having an interest in the Parcel when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. or when Grantee otherwise consents to title vesting Grantee. Grantor shall not be entitled to receive any of said net payment and the escrow holder shall not be authorized to disburse said proceeds until:

- 1) All holders of liens and encumbrances on the Parcel have received full payment for all principal and interest due to them or have consented to payment to the Grantor and have executed reconveyance of their interest in the Parcel;
- 2) All other parties having interest in have received payment therefore or have consented to a payment to Grantor; and
- 3) The City of Huntington Beach has acknowledged in writing that it concurs that all other parties having interest in the Parcel have received full payment or have consented to disbursement to Grantor.

The escrow holder shall be authorized to deliver unconditionally said Grant Deed to Grantee either when the Parcel is free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except those taxes and assessments listed as exceptions in Paragraph 2.B. herein or when Grantee otherwise consents to title vesting Grantee.

The escrow shall remain open until either a) all of the conditions of said escrow have been met, or b) in the event that a dispute arises during the course of the escrow, then until either a settlement has been reached or this agreement is terminated or a final order of condemnation under §1268.030 of the California *Code of Civil Procedure* is entered by the Court. Any sum disbursed to Grantor from this escrow shall be deducted from the ultimate amount received by Grantor as a result of any settlement, award, or verdict of just compensation for the Parcel

- B. Pay the undersigned Grantor the sum of \$84,904.05 for the property or interest conveyed by said Grant Deed when title to said property vests in the City of Huntington Beach free and clear of all liens, encumbrances,

assessments, easements and leases (recorded and/or unrecorded), and taxes, except:

- 1) Taxes for the tax year in which the escrow closes shall be cleared and paid in the manner required by §5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - 2) Covenants, conditions, restrictions and reservations of record, or contained in said Grant Deed.
 - 3) Easements or rights of way over said land for public or quasi-public street purposes, if any.
- C. Pay all escrow and recording fees incurred in this transaction, and, if title insurance is desired by Grantee, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax.
- D. Have the authority to instruct the escrow holder to deduct and pay from the amount shown in Paragraph 2.B. above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.
- E. Shall have the irrevocable right to take possession of the Parcel five (5) days after the deposit of the sum provided in Paragraph 2.B. into escrow.

3. While Grantor and Grantee anticipate that escrow will close as provided herein, in the event that a dispute arises during the course of said escrow between Grantor, Grantee and/or the escrow holder, or between Grantor and any third-party claimant to any or all of the proceeds of said escrow, and it becomes necessary for Grantee to file a condemnation action then:

- A. Grantee shall remain in possession and the compensation provided for in this agreement shall draw interest as prescribed at the apportionment rate calculated by the Controller as the rate of earning by the Surplus Money Investment Fund for each six-month period. Grantor shall be entitled to receive interest on the sum received as compensation pursuant to this agreement for Grantor's interest in the Parcel beginning at the date of possession provided for in Paragraph 2.E. herein.
- B. Grantor waives all claims and defenses challenging Grantee's right to acquire the Parcel by eminent domain in the event that Grantee files any subsequent eminent domain proceeding, and agrees that the City of Huntington Beach has the right to acquire the Parcel by eminent domain

and that the public interest and necessity require the project; the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; the Property is necessary for the project; and an offer in an amount no less than the full amount of the City of Huntington Beach's approved appraisal was made to Grantor. Grantor agrees that the total amount of compensation that shall be awarded is the sum provided in Paragraph 2 plus interest as provided in Paragraph 3.A. herein.

IN WITNESS WHEREOF, the Parties have executed this agreement on _____ at _____, State of California.

Grantor _____
Raul Contreras

Grantor _____
Dolores Contreras Austin

Grantor _____
Thomas Contreras

Grantor _____
Virginia Contreras

Grantor _____
Michael Contreras

Grantor _____
Daniel Gilbert Contreras

Grantor _____
Andrea Contreras

Grantor _____
Esther Contreras

Grantee, City of Huntington Beach

By: _____
Its duly authorized representative.

7006 2150 0000 4207 8969

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Certified Fee	
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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
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11-30-06

Sent To
Esther Contreras
Street, Apt. No., or PO Box No. **P.O. Box 2427**
City, State, ZIP+4 **Julian, CA 92036**
PS Form 3800, August 2006 See Reverse for Instructions



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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
Here

11-15-06

Sent To
Esther Contreras
Street, Apt. No., or PO Box No. **19535 Oak Tree Lane**
City, State, ZIP+4 **Riverside, CA 92580-9594**
PS Form 3800, June 2002 See Reverse for Instructions

Deputy City Attorney
City of Huntington Beach
1000 Main Street, P.O. Box 19
Huntington Beach, CA 92648

COMPLETE THIS SECTION

Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Esther Contreras
P.O. Box 2427
Julian, CA 92036

D3 . 108

2. Article Number
(Transfer from service label)
PS Form 3811, February 2002

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Esther Contreras
P.O. Box 2427
Julian, CA 92036

2. Article Number
(Transfer from service label)

7006 2150 0000 4207 8969

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
B. Received by (Printed Name) **Deatrice R. Bess** C. Date of Delivery **12/15/06**
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

7006 2150 0000 4207 8969

Re-SENT 11/30/06

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OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$ 6.80

Postmark
Here

11-15-06

Sent To

Raul Contreras
P.O. Box 16425
Irvine, CA 92623

Street, Apt. No.,
or PO Box No.
City, State, ZIP+4

PS Form 3800, June 2002

See Reverse

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Raul Contreras
19012 Delaware
Huntington Beach, CA 92648

2. Article Number
(Transfer from service label)

7006 2150 0000 4207 8921

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Raul Contreras
19012 Delaware
Huntington Beach, CA 92648

2. Article Number
(Transfer from service label)

7006 2150 0000 4207 8921

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$ 6.80

Postmark
Here

11/30/06

Sent To

Raul Contreras

Street, Apt. No.,
or PO Box No.

19012 Delaware

City, State, ZIP+4

Huntington Beach, CA 92648

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

V CONTRERAS

Agent

Address

C. Date of Delivery

11/30/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

D3. 109

Neal Moore, Sr. Deputy City Atty
City of Huntington Beach
2000 Main Street, P.O. Box 190
Huntington Beach, CA 92648

Re-sent to
New address on
11/30/06

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
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11-30-06

Sent To Delores Contreras Austin

Street, Apt. No.,
or PO Box No. 4 Arlington

City, State, ZIP+4 Irvine, CA 92720

PS Form 3800, August 2006

See Reverse for Instructions

Delores Contreras Austin
4 Arlington
Irvine, CA 92720

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
Here

11-15-06

Sent To Delores Contreras Austin

Street, Apt. No.,
or PO Box No. P.O. Box 16425

City, State, ZIP+4 Irvine, CA 92623

PS Form 3800, June 2002

See Reverse for Instructions

COMPLETE THIS SECTION

1, 2, and 3. Also complete
ed Delivery is desired.
and address on the reverse
turn the card to you.
to the back of the mailpiece,
space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7006 2150 0000 4207 8938

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Neal Moore, Sr. Deputy
City of Huntington Beach
2000 Main Street, P.O. Box
Huntington Beach, CA 92648

7003 3170 0000 01TE E002

52LT 09PT 0000 1860 1735

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Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	6.80

Postmark Here
11-15-06

Sent To
 Street, Apt. No.,
 or PO Box No. Virginia Contreras
 P.O. Box 16425
 City, State, ZIP+4 Irvine, CA 92623

PS Form 3800, June 2002 See Reverse for Instructions

7002 2410 0002 2299 4853

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
Here

11-15-06

Sent To	Thomas Contreras
Street, Apt. No., or PO Box No.	P.O. Box 16425
City, State, ZIP+4	Irvine, CA 92623

PS Form 3800, June 2002 See Reverse for Instructions

7003 3110 0000 1A59 6796

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
Here

11-15-06

Sent To	Michael Contreras
Street, Apt. No., or PO Box No.	P.O. Box 16425
City, State, ZIP+4	Irvine, CA 92623

PS Form 3800, June 2002

See Reverse for Instructions

7006 2150 0000 4207 8945

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Postage	\$	Postmark Here 4-30-06
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 6.80	

Sent To: **Andrea Contreras**
Street, Apt. No., or PO Box No.: **36045 Madora Drive**
City, State, ZIP+4: **Wildomar, CA 92595**

PS Form 3800, August 2005 See Reverse for Instructions

7006

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Postage	\$	Postmark Here 11-15-06
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 6.80	

Sent To: **Andrea Contreras**
Street, Apt. No., or PO Box No.: **24320 Adams Ave.**
City, State, ZIP+4: **Murrieta, CA 92562**

PS Form 3800, June 2002 See Reverse for Instructions

Neal Moore, Sr. Deputy City
City of Huntington Beach
2000 Main Street, P.O. Box 11
Huntington Beach, CA 92648

COMPLETE THIS SECTION

ems 1, 2, and 3. Also complete
stricted Delivery is desired.
ame and address on the reverse
an return the card to you.
card to the back of the mailpiece,
nt if space permits.

Andrea Contreras
36045 Madora Drive
Wildomar, CA 92595

2. Article Number
(Transfer from service label)

Andrea Contreras
36045 Madora Drive
Wildomar, CA 92595

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
X *Andrea Contreras*
B. Received by (Printed Name) **D. Contreras**
C. Date of Delivery **12/1/06**
D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

OMAR, CA 92562
1 2006

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
**Andrea Contreras
36045 Madora Drive
Wildomar, CA 92595**

2. Article Number
(Transfer from service label)
7006 2150 0000 4207 8945

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
X
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

D3.114

7006 2150 0000 4207 8945

RU

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
Here
11-30-06

Sent To **Daniel Gilbert Contreras**
Street, Apt. No., 36045 Madora Drive
or PO Box No. Wildomar, CA 92595
City, State, ZIP+4
PS Form 3800, August 2006 See Reverse for Instructions

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Postmark
Here
11-15-06

Sent To **Daniel Gilbert Contreras**
Street, Apt. No., 24320 Adams Ave.
or PO Box No. Murrieta, CA 92562
City, State, ZIP+4
PS Form 3800, June 2002 See Reverse for Instructions

Needing
City of
2000 Main
Huntington

D3.115

2. Article Number
(Transfer from service) 7006 2150 0000 4207 8952
PS Form 3811, February 2004

Daniel Gilbert Contreras

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
B. Received by (Printed Name) **Daniel Gilbert Contreras** C. Date of Delivery **11/30/06**
D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

SENDER: COMPLETE THIS SECTION

1. Article Addressed to:
Daniel Gilbert Contreras
36045 Madora Drive
Wildomar, CA 92595

2. Article Number
(Transfer from service) 7006 2150 0000 4207 8952

COMPLETE THIS SECTION

1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature **X** ☐ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

Domestic Return Receipt

102595-02-M-1540

ATTACHMENT 6

**INTENTIONALLY
LEFT
BLANK**



Jennifer McGrath
City Attorney

**OFFICE OF
CITY ATTORNEY**

**P.O. Box 190
2000 Main Street
Huntington Beach, California 92648**
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

**Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr. Deputy City Attorney
Leonie Mulvihill, Sr. Deputy City Attorney
John Fujii, Deputy City Attorney
Teresa Judd, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Michael Vigliotta, Deputy City Attorney**

December 27, 2006

**NOTICE OF INTENTION TO ADOPT A RESOLUTION
OF NECESSITY FOR THE ACQUISITION OF A PORTION OF
CERTAIN REAL PROPERTY LOCATED AT
7782 AND 7802 GARFIELD AVENUE, IDENTIFIED AS ASSESSOR
PARCEL NOS. 159-151-01, 159-151-02, 159-151-03,
AND 159-151-16**

NOTICE IS HEREBY GIVEN that the City Council of the City of Huntington Beach, at its regular meeting to be held on Tuesday, January 16, 2007, at 6:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers located at 2000 Main Street, Huntington Beach, California 92648, will hold a hearing on whether a Resolution of Necessity should be adopted, authorizing the acquisition of 20 feet of additional right-of-way from the above described real property located on the south side of Garfield Avenue, including the acquisition of a 3 month temporary construction easement of less than 5 feet, for the purpose of the proposed widening of Garfield Avenue, pursuant to Government Code Section 37350.5 and 40404.

You have a right to appear and be heard at the above scheduled hearing on the following matters and issues, before the City Council decides whether or not to adopt the attached proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the proposed project;
- b. Whether the proposed project is planned or located in the matter that will be most compatible with the greatest public good and the least private injury;
- c. Whether the property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the proposed project; and
- d. Whether an offer to purchase, and accompanying statement and summary, was made in a form and manner required by Government Code Section 7267.2(a).

If you wish to be heard at this hearing, you must file a written request with the City Clerk located at 2000 Main Street, Huntington Beach, California 92648, on or before 1:00 p.m. on January 16, 2007.

The amount of compensation to be paid for the acquisition of the property is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation than you have been offered, in and as determined by a court of law in accordance with the laws of the State of California. If you elect not to appear and be heard, you will only be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the property by eminent domain.

This Notice of Hearing is not intended to foreclose future discussions or negotiations between you and representatives of the City of Huntington Beach on the amount of compensation to be paid for the property.

JENNIFER McGRATH
City Attorney

By:

A handwritten signature in black ink, appearing to read 'Neal Moore', written over a horizontal line.

NEAL MOORE
Sr. Deputy City Attorney

[PROPOSED]
RESOLUTION NO. _____

A RESOLUTION OF NECESSITY OF THE
CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH, CALIFORNIA
APPROVING THE ACQUISITION OF PORTIONS OF CERTAIN REAL PROPERTY
LOCATED AT 7782 AND 7802 GARFIELD AVENUE, ASSESSOR'S PARCEL NOS. 159-
151-01, 159-151-02, 159-151-03, AND 159-151-16, TOGETHER WITH A TEMPORARY
CONSTRUCTION EASEMENT OF LESS THAN 5 FEET IMMEDIATELY ADJACENT AND
SOUTH OF THE ACQUIRED REAL PROPERTY FOR A PERIOD OF 3 MONTHS DURING
CONSTRUCTION, BY EMINENT DOMAIN TO PERMIT STREET WIDENING

WHEREAS, the project for purposes of this acquisition consists of the widening and
improving of Garfield Avenue (the "Project"); and

The City Council is authorized under Government Code §§ 37350.5 and 40404 to utilize
the power of eminent domain to acquire real property for the purpose of installing, constructing
and widening public streets, and for related public purposes which are a governmental function
of the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-
01 and whose address is 7802 Garfield Avenue, which real property is more particularly
described in the legal description and illustration, respectively attached hereto as Exhibit A and
Exhibit B and by this reference incorporated herein, is adjacent to the south side of Garfield
Avenue in the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-
02, and whose address is 7802 Garfield Avenue, which real property is more particularly
described in the legal description and illustration, respectively attached hereto as Exhibit C and
Exhibit D and by this reference incorporated herein, is adjacent to the south side of Garfield
Avenue in the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-03, and whose address is 7802 Garfield Avenue, which real property is more particularly described in the legal description and illustration, respectively attached hereto as Exhibit E and Exhibit F, and by this reference incorporated herein, is adjacent to the south side of Garfield Avenue in the City; and

A portion of real property (the "Property") known as Assessor's Parcel Number 159-151-16 and whose address is 7782 Garfield Avenue, which real property is more particularly described in the legal description and illustration, respectively attached hereto as Exhibit G and Exhibit H, and by this reference incorporated herein, is adjacent to the south side of Garfield Avenue in the City; and

An aerial map showing the Property and immediate vicinity is attached hereto as Exhibit I and by this reference is incorporated herein; and

The City Council has determined that it is in the interest of the City to widen Garfield Avenue in accordance with the Project; and

Pursuant to Government Code § 65402, the Planning Commission of the City of Huntington Beach adopted General Plan Conformance No. 03-01 and Resolution No. 1584, on July 22, 2003, stating the findings and determinations of the Planning Commission that the location, purpose, and extent of the proposed acquisition of the Property conform with the City's General Plan; and

All persons whose names and addresses appear on the last equalized county assessment roll for the Property were given notice of the intention of the City to adopt a Resolution of Necessity and to authorize the institution of eminent domain proceedings, and were informed of the right to be heard on said matter pursuant to the Code of Civil Procedure § 1245.235; and

A public hearing was held by the City Council on January 16, 2007, at which the matters set forth above and in Code of Civil Procedure § 1240.030 were discussed, including the following matters: (a) whether the public interest and necessity require the Project; (b) whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) whether the Property is necessary for the Project; and (d) whether an offer of just compensation pursuant to Government Code § 7267.2 has been made to the owner or owners of record;

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby resolve as follows:

Section 1: That the above Recitals are all true and correct and are incorporated herein.

Section 2: That the City Council does hereby find and determine the following:

- A. That the City Council, pursuant to Government Code §§ 37350.5 and 40404, is empowered to condemn any property necessary to carry out the public purpose of the Project.
- B. That the public interest and necessity require construction and completion of the Project, because the City's General Plan, and specifically the Circulation Element, calls for the expansion of Garfield Avenue in the manner contemplated by the Project. In addition, the Garfield Avenue road widening is designed to relieve traffic congestion, increase the capacity of the street and provide continuity in the roadway alignment, and to provide the adjoining

real properties with improved and safer access, improved drainage, together with curbs, gutter, and sidewalks.

C. That the Project is planned and located in a manner that will be most compatible with the greatest public good and least private injury, because the design of the roadway widening must of necessity occupy land which is immediately adjacent to the existing roadway in order to maintain the continuity of the alignment of the road for all users. The Project is designed in a manner compatible with the greatest public good, because the Project will involve road widening and related improvements which will enhance the utility, drainage, and safety of the area, including improving traffic safety and circulation for all those traveling on Garfield Avenue, and also including improved and safer access to and from the adjoining properties. The Project will result in the least private injury, because where consistent with safe roadway design restrictions, the amount of property for potential acquisition was determined so as to minimize the amount of the parcel taken, and to minimize impacts to the remainder of the parcel.

D. That the acquisition of the Property is necessary to permit construction and completion of the Project, because the roadway widening must occur on property immediately adjacent to the

existing roadway. Without inclusion of the Property, the Project could not be completed.

- E. That the acquisition of a temporary construction easement of less than 5 feet immediately adjacent and south of the Property, for a period of 3 months during construction, to permit intermittent use of the adjacent property for purposes of construction, is also necessary to permit construction and completion of the Project.
- E. That the City prepared and recorded an environmental impact Notice of Exemption on November 4, 2005 regarding the Project.
- F. That offers of just compensation pursuant to Government Code § 7267.2 have been made to all owners of record of the Property, or their representatives, on or about November 15, 2005, that reasonable diligence has been used to locate every interested owner, that the City's offers of just compensation were based on appraisals of the Property, and that the City's offers were for the full appraised amount. City staff has had discussions with the owners, or their representatives, subsequent to these offers, but such discussions have not yet proved successful in securing the necessary property interests outside of more formal proceedings.
- G. That due to the failure of the owners of record to accept the City's offers of just compensation, the Project cannot be completed except by the City Council's power of eminent domain.

- H. That the public interest and necessity require acquisition of the Property and that such acquisition is necessary for the Project.
- I. That the Property, acquisition of which is required for the public interest and necessity, is situated in the City of Huntington Beach, County of Orange, State of California.

Section 3: The City Council hereby declares its intent to acquire a fee simple absolute interest, for the purpose of conducting roadway widening and related improvements, in and to the Property in the City's name in accordance with the provisions of the laws of the State of California. The City Council further declares its intent to acquire a temporary construction easement of less than 5 feet immediately adjacent and south of the Property, for a period of 3 months during construction of the Project, to permit intermittent use of the adjacent property for purposes of construction of the Project.

Section 4: The City Attorney is hereby authorized to commence an action in the Superior Court of the State of California in and for the County of Orange, in the name and on behalf of the City against those persons who appear as owner or owners of record or who are known to have any claim or interest in the Property for the purpose of acquiring a fee simple absolute interest in and to the Property by eminent domain for the public uses described herein, to acquire a temporary construction easement of less than 5 feet immediately adjacent and south of the Property for a period of 3 months during construction of the Project, and to make application for possession of the Property prior to judgment, to do all things necessary to prosecute the action to its final determination in accordance with the provisions of law applicable thereto, and to take any appropriate action consistent with the purposes of this Resolution.

Section 5: The City staff is hereby authorized to take any appropriate action consistent with the purposes of this Resolution, including but not limited to the withdrawal of necessary sums to deposit with the Court as the probable amount of compensation that will be awarded in the eminent domain proceedings to acquire the Property.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2007.

REVIEWED AND APPROVED:

City Administrator

Mayor

APPROVED AS TO FORM:

City Attorney

INITIATED AND APPROVED:

Director of Public Works

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Exhibit A

Legal Description

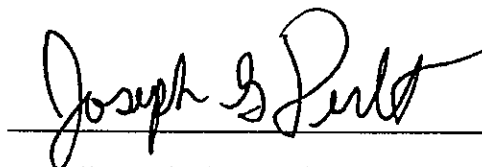
The Northerly 20.00 feet, of the Easterly 77.00 feet of Lot 3, of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom all right, title and interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, with the right to enter in and upon the premises at any time, drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed from W.M. Elliott and Vera L. Elliott to Daniel Contreras and Ruperta Contreras, husband and wife, for an undivided one-half interest in said land recorded June 26, 1944, in Book 1259, page 258 of Official Records of Orange County, California and as reserved in the deed from Katherine Hendrickson McDonald, formerly Katherine Hendrickson, to Pete Alvarez and Carmen O. Alvarez, husband and wife, for an undivided one-half interest in said land, recorded February 27, 1958 in Book 4210, page 222 of Official Records of said Orange County.

Containing 1540.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.

DRAFT



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-01

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

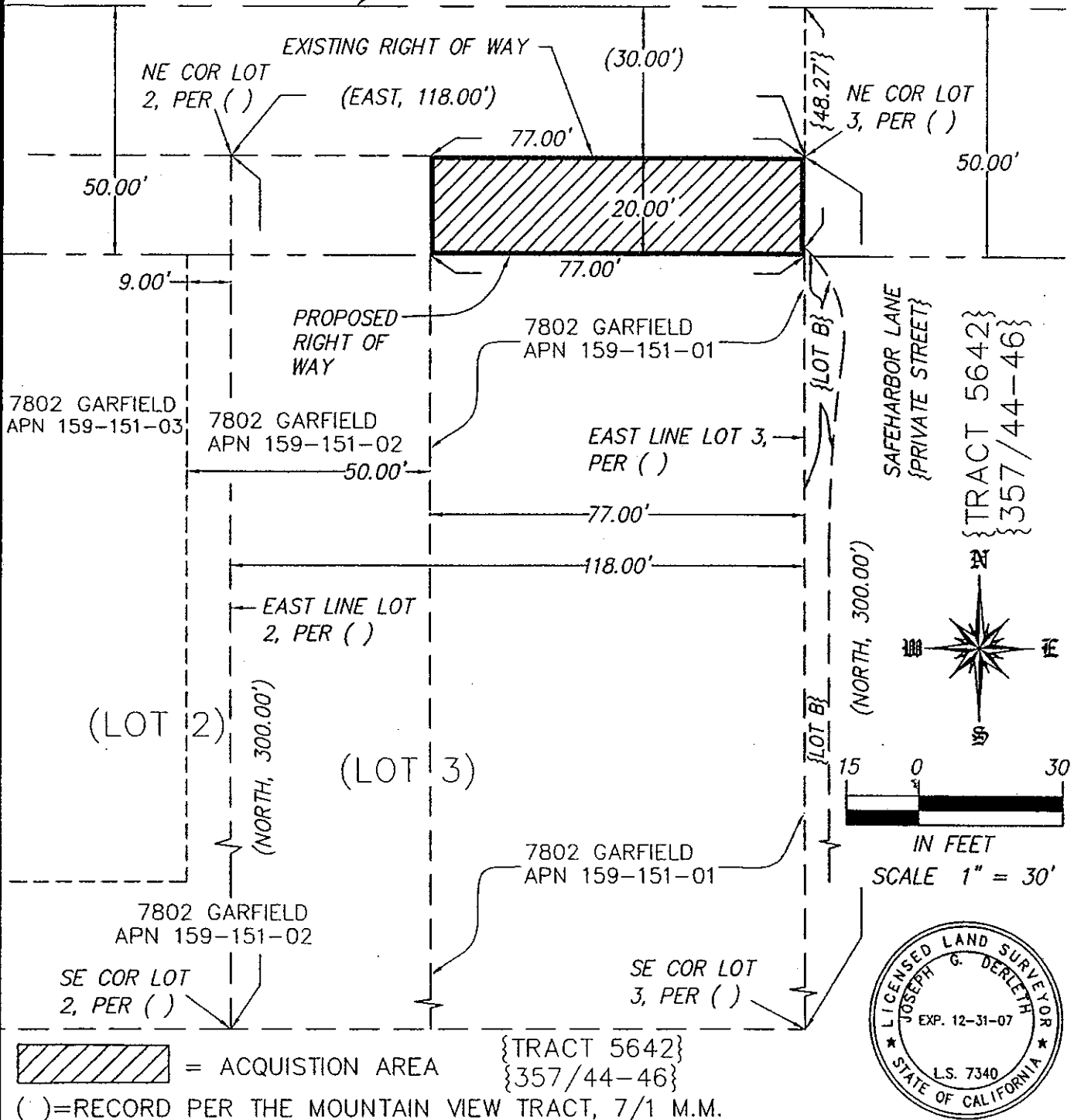
D3.126



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Exhibit B

GARFIELD AVENUE



= ACQUISITION AREA {TRACT 5642}

() = RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

{ } = RECORD PER TRACT 5642, 357/44-46 M.M.

NOTE: LOT B, SHOWN HEREON WAS CREATED PER TRACT 5642, BUT IS UNDEFINED THEREON AS TO PURPOSE OF CREATION.

Plat for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-01

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

D3.127



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Exhibit C

Legal Description

The North 20.00 feet, of the West 41.00 feet of Lot 3 and the North 20.00 feet, of the East one-half of Lot 2, both of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom the North 170.00 feet, of the West 50.00 of said East one-half of said Lot 2.

Also excepting therefrom an undivided one-half interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, and the right to enter in and upon the premises at any time to drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed recorded June 26, 1944, in Book 1256, page 258 of Official Records, of said County

Also excepting therefrom an undivided one-half interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, and the right to enter in and upon the premises at any time to drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed recorded February 27, 1958 in Book 4210, page 222 of Official Records, of said County.

Containing 1000.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.



DRAFT

Joseph G. Derleth
PLS 7340, expires 12/31/07

Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-02

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

D3 . 128



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4 GARFIELD AVENUE



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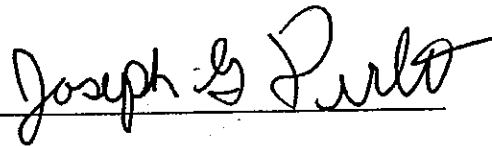
Exhibit E

Legal Description

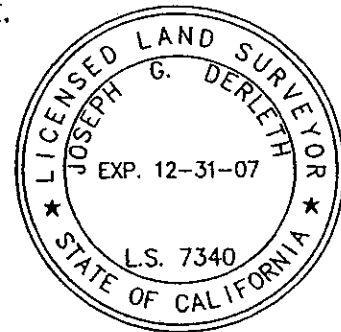
The Northerly 20.00 feet, of the North 170.00 feet, of the West 50.00 of the east one-half of Lot 2, of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Containing 1000.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.



Joseph G. Derleth
PLS 7340, expires 12/31/07



Legal Description for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-03

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

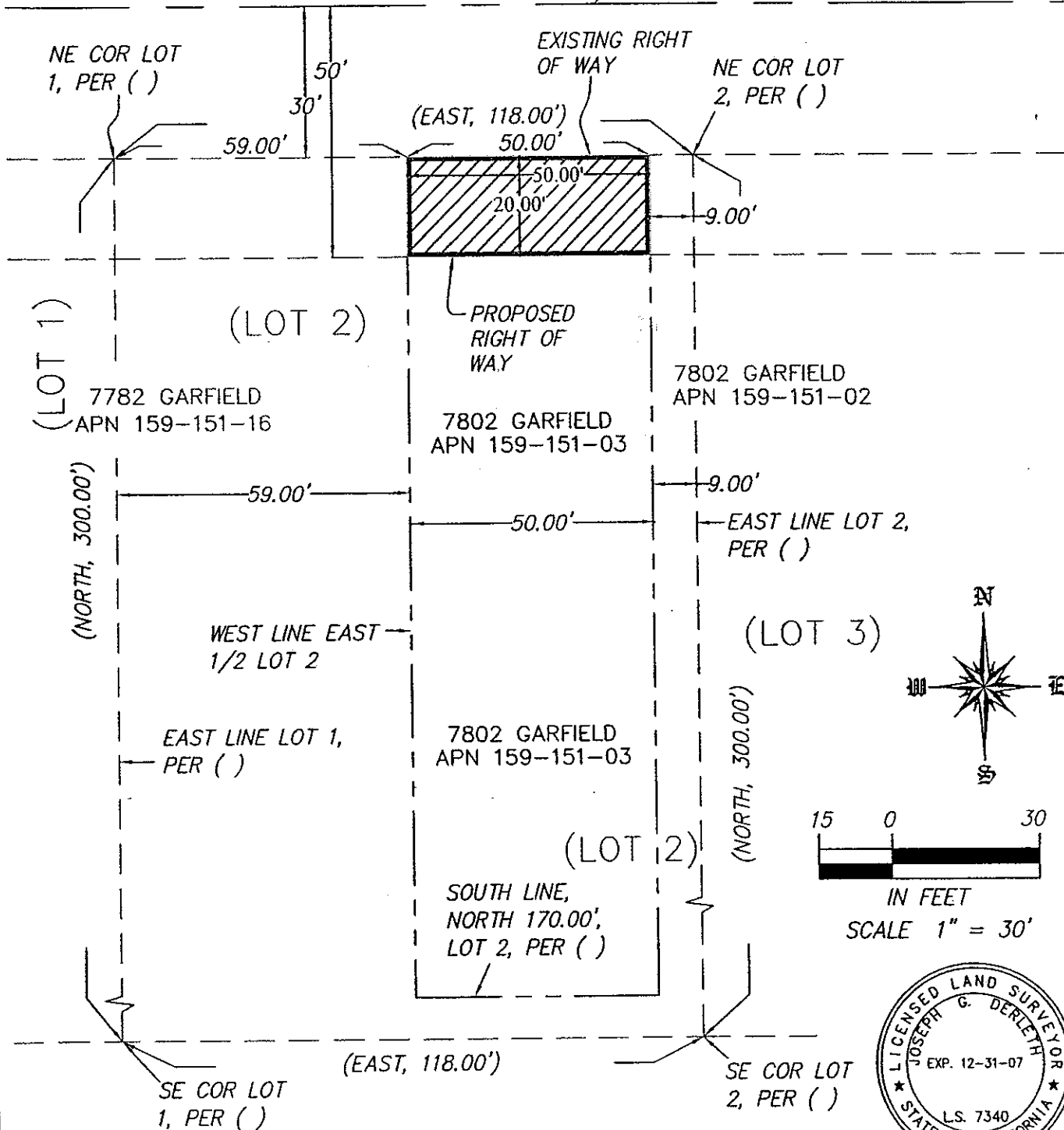
D3 . 130



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Exhibit F

CL GARFIELD AVENUE



= ACQUISITION AREA

() = RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

Plat for Right-of-Way Acquisition
7802 Garfield Avenue : APN 159-151-03

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

D3.131



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Legal Description

The Northerly 20.00 feet of the North half of Lot 1 and the Northerly 20.00 feet of the West 59.00 feet of Lot 2, both of the Mountain View Tract, located in the City of Huntington Beach, County of Orange, State of California, in the Rancho Las Bolsas, as shown on the map filed in Book 7, page 1 of Miscellaneous Maps, in the Records Office of said County.

Excepting therefrom the West 88.50 feet, and the West 11.50 of East 29.50 feet of said North half of said Lot 1.

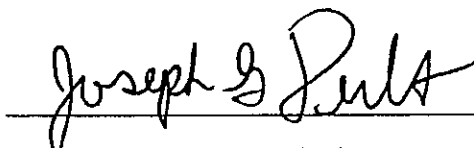
Also excepting therefrom the South 150.00 feet, of said 59.00 feet of said Lot 2.

Also excepting therefrom all right, title and interest in and to the mineral rights therein, including all oil, gasoline or other hydrocarbon substances thereunder, with the right to enter in and upon the premises at any time, drill for, extract and produce said oil, gas and other hydrocarbon substances thereunder, as reserved in the deed from A.M. Elliott and Vera L. Elliott to Daniel Contreras and Ruperta Contreras, husband and wife, for an undivided one-half interest in said land recorded June 26, 1944, in Book 1259, page 258 of Official Records of Orange County, California and as reserved in the deed from Katherine Hendrickson McDonald, formerly Katherine Hendrickson, to Pete Alvarez and Carmen O. Alvarez, husband and wife, for an undivided one-half interest in said land, recorded February 27, 1958 in Book 4210, page 222 of Official Records of said Orange County.

Containing 1540.0 square feet more or less.

Exhibit "B" attached and by this reference made a part hereof.

DRAFT



Joseph G. Derleth
PLS 7340, expires 12/31/07

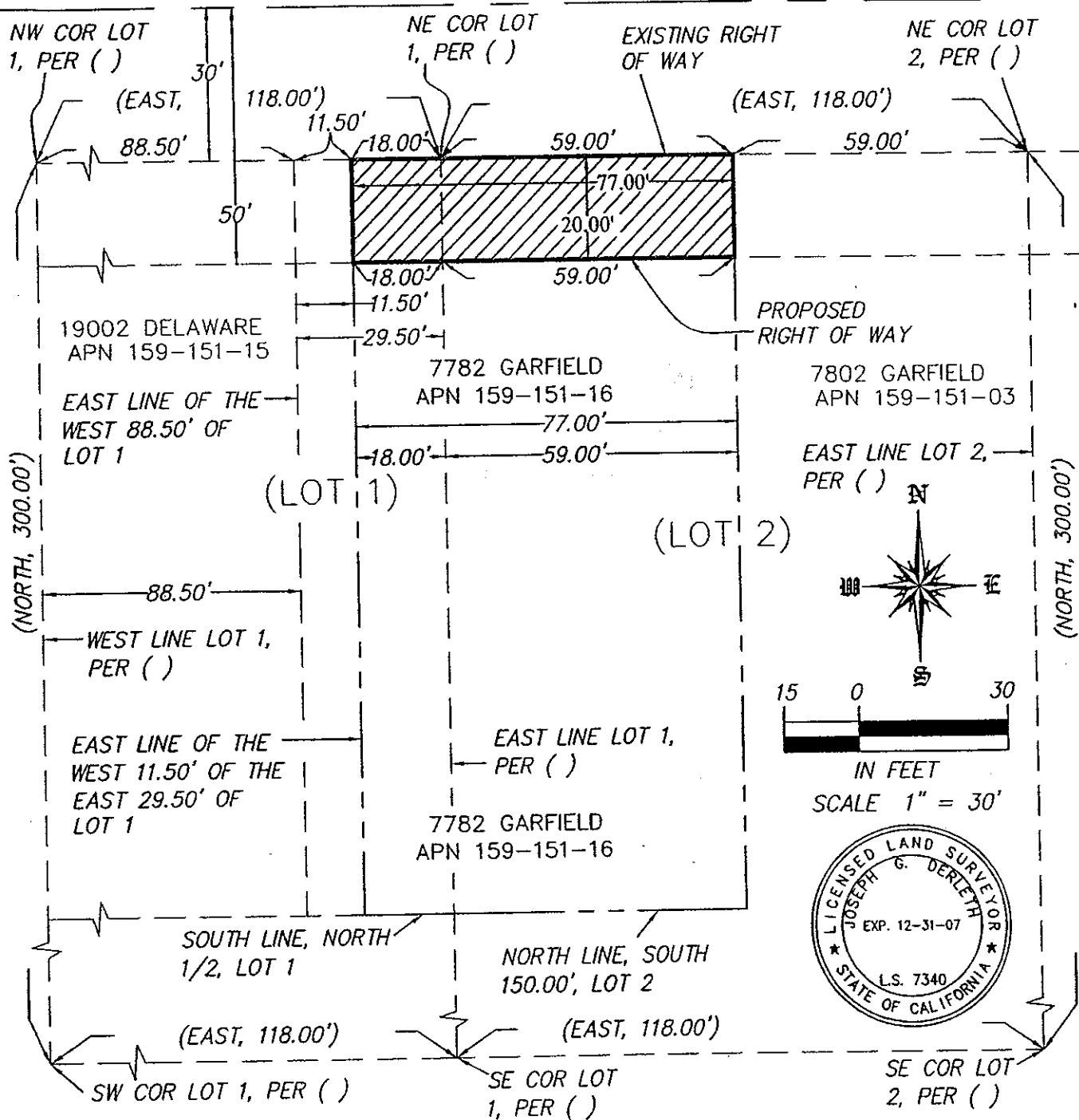


Legal Description for Right-of-Way Acquisition
7782 Garfield Avenue : APN 159-151-16

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



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= ACQUISITION AREA

() = RECORD PER THE MOUNTAIN VIEW TRACT, 7/1 M.M.

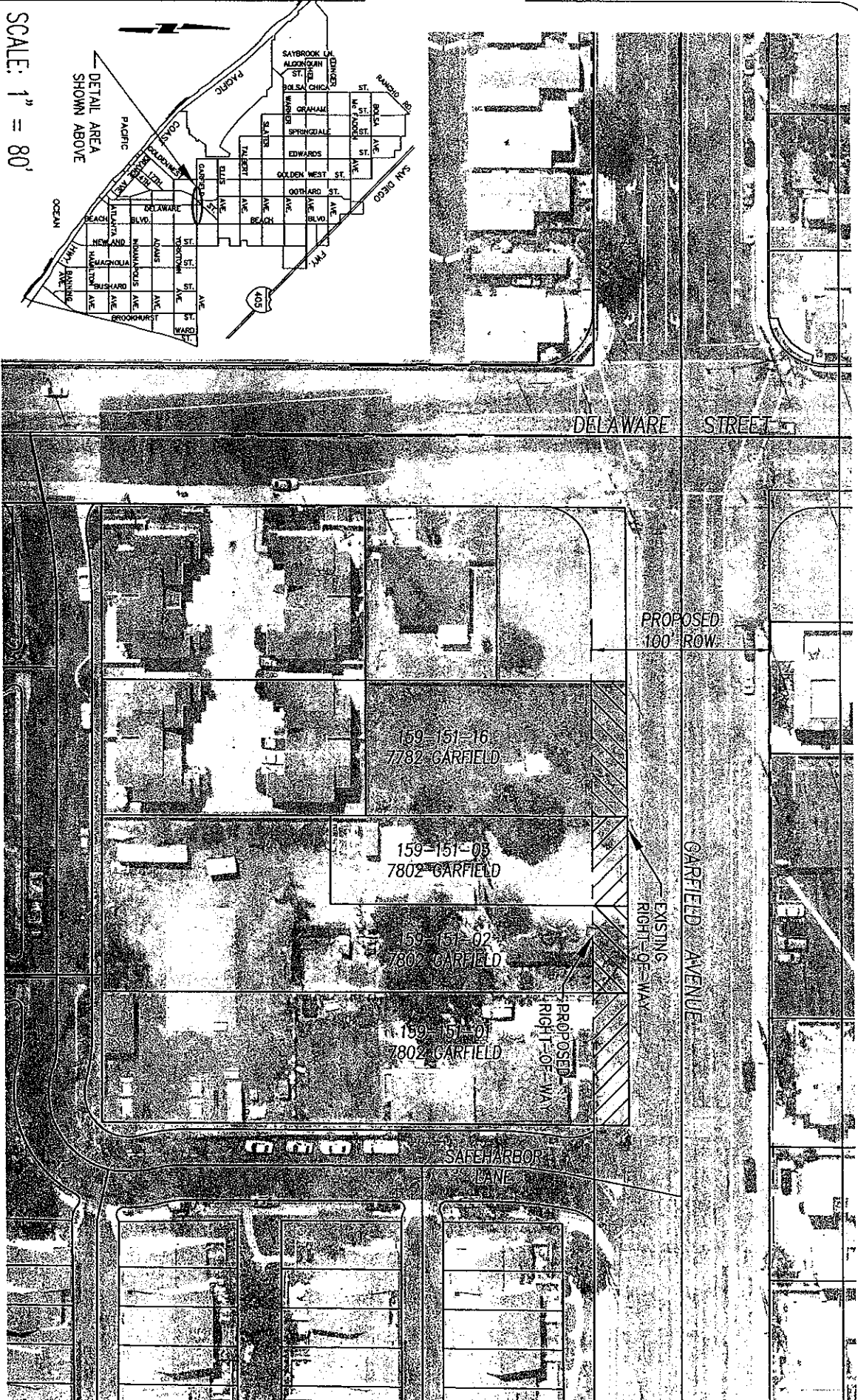
Plat for Right-of-Way Acquisition
7782 Garfield Avenue : APN 159-151-16

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS

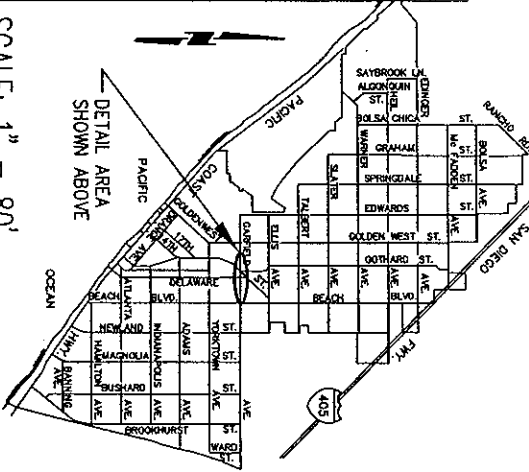


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EXHIBIT I



SCALE: 1" = 80'



REAL PROPERTY ACQUISITION

20 FOOT RIGHT-OF-WAY AT 7782 AND 7802 GARFIELD AVE.

CITY OF HUNTINGTON BEACH

DEPARTMENT OF PUBLIC WORKS



1 OF 1

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2000 Main Street, Huntington Beach, CA 92648.

On December 27, 2006, I served the foregoing document described as: **NOTICE OF INTENTION TO ADOPT A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF A PORTION OF CERTAIN REAL PROPERTY LOCATED AT 7782 AND 7802 GARFIELD AVENUE, IDENTIFIED AS ASSESSOR PARCEL NOS. 159-151-01, 159-151-02, 159-151-03, AND 159-151-16** with attached Proposed Resolution of Necessity on the interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

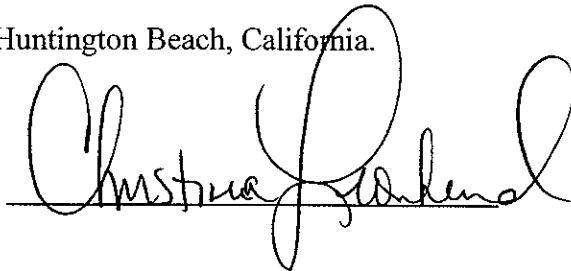
SEE ATTACHED SERVICE LIST

- a. ☒ BY MAIL -- I caused such envelope to be deposited in the mail at Huntington Beach, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in the affidavit.
- b. ☐ BY MAIL -- By depositing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the United States mail at Huntington Beach, California, addressed to the address shown above.
- c. ☐ BY DELIVERY BY HAND to the office of the addressee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 27, 2006, at Huntington Beach, California.

CHRISTINA LEONHARD

A handwritten signature in black ink, appearing to read 'Christina Leonhard', written over a horizontal line.

PROOF OF SERVICE LIST

Michael M. Leifer
Palmieri Tyler Wiener
Wilhelm & Waldron, LLP
2603 Main Street
East Tower, Suite 1300
Irvine, CA 92614-6228

Fidencio Alvarez
18262 Pammy Lane
Huntington Beach, CA 92648

Fidencio Alvarez
7802 Garfield Ave.
Huntington Beach, CA 92648

Constance M. Alvarez
1201 Pine Street
Huntington Beach, CA 92648

Pete Alvarez
18262 Pammy Lane
Huntington Beach, CA 92648

Vivian Alvarez
18262 Pammy Lane
Huntington Beach, CA 92648

Vivian Alvarez
7802 Garfield Ave.
Huntington Beach, CA 92648

Esther Contreras
19535 Oak Tree Lane
Riverside, CA 92580-9494

Esther Contreras
P.O. Box 2427
Julian, CA 92036

Daniel Gilbert Contreras
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Wildomar, CA 92584

Andrea Contreras
36045 Madora Drive
Wildomar, CA 92584

Raul Contreras
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Huntington Beach, CA 92648

Delores Contreras Austin
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Irvine, CA 92720

Thomas Contreras
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Irvine, CA 92623

Virginia Contreras
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Huntington Beach, CA 92648

Michael Contreras
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Irvine, CA 92623